United States Court of Appeals

for the Second Circuit

APPENDIX

74-1917
74-1946

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

ANTHONY POLITI, GERALD POLITI, PHILIP POLITI, MICHAEL ROMAN, ROBERT PETERS, MICHAEL CAMPOREALE, ALPHONSE CUZZO, ARTHUR FRANGELLO, LEONARD HARRISON, LAWRENCE JOHNSON, LOUIS VISCONTI, EDDIE WASHINGTON, and HARRY WEIS,

Appellants.

On Appeal from the United States District Court for the Southern District of New York.

APPENDIX

Volume II pp. 331a-661a

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United States District Court

331a

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

THE PREMISES KNOWN AS 94 GARDEN ST. POUGHKEEPSIE, NEW YORK, FURTHER DESCRIBED AS A TWO STORY, ONE FAMILY FRAME RESIDENTIAL DWELLING

Magistrate's Docket No. 72

Case No. 945

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by BOB C. REUTTER, Special Agent, FBI

that he { has reason to believe } that { on the premises known as }

94 Garden Street, Poughkeepsie, New York, further described as a two-story, one family, frame residential dwelling

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel (here describe property) names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the { premises } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { place } named for the property specified, serving this warrant and making the search { in the daytime } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

HAROLD J. RABY

Dated this day of , 19

JUN 13 1972

U.S. Magistrate.

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched {the person / the premises} described in the warrant and

I left a copy of the warrant with _____
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this day of , 19 .

_____
U. S. Magistrate.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

- v - : AFFIDAVIT

LONNIE JOHNSON,
J. H. CARRINGTON, JR.
EDDIE WASHINGTON,
LEONARD HARRISON,
ARTHUR FRANGELLO,
LOUIS VISCONTI,
PATRICIA ANN HYATT,
MICHAEL CAMPOREALE,
GERALD POLITI,
JANE DOE, A WHITE FEMALE, ABOUT 21 YEARS OF AGE, ABOUT 5'4" TALL, 100 LBS., WHO DRIVES A BLUE 1964 DODGE BEARING NEW YORK LICENSE NO. 2962 NW, AND
JOHN DOE,
A WHITE MALE, ABOUT 25 YEARS OF AGE, ABOUT 5'10" TALL, 150 LBS., WITH LONG BROWN HAIR AND A MOUSTACHE, WHO DRIVES A 1962 GREY OLDSMOBILE, BEARING NEW YORK LICENSE NO. 6185 FF,

THE PREMISES KNOWN AS 94 GARDEN STREET, POUGHKEEPSIE, NEW YORK, FURTHER DESCRIBED AS A TWO-STORY, ONE FAMILY FRAME RESIDENTIAL DWELLING

SOUTHERN DISTRICT OF NEW YORK, SS:

BOB C. REUTTER, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such, and that he submits this affidavit in support of applications for search warrants of the above location and arrest warrants for the above named individuals.

1. I have been a Special Agent of the Federal Bureau of Investigation for the past three years. During that time I have participated in more than 30 separate and distinct gambling investigations involving numerous subjects. As a result I have become familiar with illegal gambling businesses, their methods of operation and the records commonly used by bookmakers and other gamblers.

2. I am in charge of the investigation of the gambling activities of LONNIE JOHNSON, J.H. CARRINGTON, JR., EDDIE WASHINGTON, LEONARD HARRISON, ARTHUR FRANGELLO, LOUIS VISCONTI, PATRICIA ANN HYATT, MICHAEL CAMPOREALE, GERALD POLITI, JANE DOE, A WHITE FEMALE ABOUT 21 YEARS OF AGE, ABOUT 5'4" TALL, 100 LBS., WHO DRIVES A BLUE 1964 DODGE BEARING NEW YORK LICENSE NO. 2962 NW, AND JOHN DOE, A WHITE MALE, ABOUT 25 YEARS OF AGE, ABOUT 5'10" TALL, 150 LBS., WITH LONG BROWN HAIR AND A MOUSTACHE, WHO DRIVES A 1962 GREY OLDSMOBILE BEARING NEW YORK LICENSE NO. 6185 FF, AND THE PREMISES KNOWN AS 94 GARDEN STREET, POUGHKEEPSIE, NEW YORK, FURTHER DESCRIBED AS A TWO STORY, ONE FAMILY FRAME RESIDENTIAL DWELLING, and others. During the course of this investigation I have received information from two confidential informants.

3. Confidential informant number one has been supplying information concerning gambling offenses to local and federal authorities for longer than six months. This person, who has been contacted by the Federal Bureau of Investigation on a monthly basis, has given data which has been consistently corroborated and which has resulted in 8 arrests for gambling offenses.

4. Confidential informant number two is a person who has been supplying information concerning federal offenses to the Federal Bureau of Investigation for at least one year. This person has been contacted by agents of the Federal Bureau of Investigation on a monthly basis and the information he has given, which has been consistently corroborated, has resulted in six arrests.

5. From my experience as an agent of the Federal Bureau of Investigation investigating policy gambling operations I know that a policy bet is a wager on a series of numbers placed by a gambler with a person called a runner. This runner, having accepted bets from several gamblers, takes these bets to a location called a "spot" where the work product of numerous runners is collected. After all the bets are collected in the "spot" an individual commonly called a "pickup man" will collect

bets from various "spots" and take them to a location commonly known as a "policy bank." At the policy bank the accounting for the days wagers is done by a trusted employee of the gambling enterprise. This person will compute the daily receipts from each runner and the number of "hits" or wins by a gambler and the portion of the profits to be split among "spots" and the "runners". Another person, but under ordinary circumstances, not the same person as the one who collects the wagering information, will collect the money which has been bet with the runners, from each spot and bring this money to a high level figure within the gambling enterprise. Because of the danger of an arrest and seizure of policy gambling material the money will seldom travel with the policy work, but will usually be delivered by an individual different from the person who delivers the policy work to the "bank." The delivery of the gambling data and the money takes place at the end of the normal working day, after all the wagers have been placed. On the very next morning the tabulations (which are called in the gambling parlance "ribbons") are given to a runner, along with that amount of money which represents the wagers won by bettors and the portion of the proceeds due to the spots and runners. This "runner" will then deliver back to the "spots", the "ribbons" and cash.

6. Informant number one is a person who is an acquaintance of LONNIE JOHNSON, EDDIE WASHINGTON, LEONARD HARRISON, J.H. CARRINGTON, JR., and LOUIS VISCONTI and as such has had conversations with these men over the past two years. On numerous occasions he has had an opportunity to place policy bets with J.H. CARRINGTON, JR., LONNIE JOHNSON, EDDIE WASHINGTON and LEONARD HARRISON. As a result of his conversations with these individuals and as a result of his own gambling activities informant number one knows that

a. LONNIE JOHNSON controls a policy gambling operation in the Poughkeepsie, New York area with the control "spot" located at 94 Garden Street, Poughkeepsie, New York.

JOHNSON employs several runners one ofwhom is J.H. CARRINGTON, JR. On several occasions during the past three months informant number one has placed policy bets with both JOHNSON and CARRINGTON. At the time he placed these bets he was able to converse with these men concerning their gambling operations.

b. Informant number one stated that during early March, 1972 he was told by LOUIS VISCONTI that he (VISCONTI) was the "pick-up man", delivering the day's work and the wagering receipts from the Poughkeepsie "spot" to a Westchester County "pick-up man". Informant number one told the Federal Bureau of Investigation that the Westchester County "pick-up man" was a young man with mod attire and hair style who drove a black over blue Dodge automobile.

c. In May, 1972 informant number one stated that VISCONTI told him that the gambling operation was now employing young men and women as the policy pick-up people. That is, these young people would deliver the policy gambling work from the various "spots" to the focal point of the gambling operation in Westchester County. This informant indicated that VISCONTI stated that he was still responsible for delivering the gambling receipts to the policy bank.

d. Informant number one, who is an acquaintance of EDDIE WASHINGTON and who has spoken to him on numerous occasions, stated that WASHINGTON told him that he controls the Newburgh, New York policy gambling enterprise and that LEONARD HARRISON is his number one pick-up man. WASHINGTON stated that he and HARRISON meet in the late afternoon each day in order to go over the policy work for Newburgh. HARRISON would leave after this meeting with a package in order to meet another pick-up person.

7. Informant number two is a person who knows ARTHUR FRANGELLO for several years and who has placed policy bets with him on occasion during that period of time. This informant reported that he was told by FRANGELLO that he met with his

runners each day in the afternoon in the vicinity of the Twilight Bar located on Washington Street in Newburgh, New York. This informant indicated that FRANGELLO would leave the Twilight Bar at 4:30 in the afternoon or thereabouts with a package containing his policy work.

OBSERVATIONS BY FEDERAL BUREAU OF INVESTIGATION AGENTS

A. The Poughkeepsie Operation

8. Since January 13, 1972 agents of the Federal Bureau of Investigation have observed on an almost daily basis policy gambling operations, or "spots", located in Poughkeepsie and Newburgh, New York. These observations indicate that the Poughkeepsie gambling operation employs more than nine "runners" and the Newburgh operation employs more than 10 runners.

9. Between the dates of January 14, 1972 and June 6, 1972 on more than 10 occasions, agents of the Federal Bureau of Investigation observed J.H. CARRINGTON, JR. enter 94 Garden Street, Poughkeepsie, New York. On January 26 CARRINGTON was observed carrying money and slips of paper and on April 14 he was observed carrying an envelope such as one customarily used in policy gambling operations.

10. Between the dates of February 10 and May 9, 1972 on more than eight occasions, agents ofthe Federal Bureau of Investigation observed LONNIE JOHNSON meet with LOUIS VISCONTI. On February 10, 1972 JOHNSON was observed handing VISCONTI an envelope and on April 14 he was observed handing VISCONTI a package. On May 5, 1972 these agents observed JOHNSON hand VISCONTI packages; on May 6, 1972 they also observed JOHNSON hand VISCONTI a package. On May 9, 1972 they observed JOHNSON hand VISCONTI money and envelopes.

11. On May 8, 15 and June 6, 1972 LONNIE JOHNSON was observed meeting with JOHN DOE and handing him a package. This meeting took place in the vicinity of the "spot" at 94 Garden Street, Poughkeepsie, New York.

12. On April 25, May 6 and May 19, 1972 EDDIE WASHINGTON was observed meeting with LOUIS VISCONTI.

B. The Newburgh Operation

13. On eight occasions between April 20 and May 19, 1972 LEONARD HARRISON was observed meeting with LOUIS VISCONTI and on May 5, 1972 HARRISON was observed handing VISCONTI a package.

14. On April 20, 1972 EDDIE WASHINGTON was observed meeting with LEONARD HARRISON in the late afternoon. Officers from the New York State Police have reported to Special Agents of the Federal Bureau of Investigation that they have observed these two men meeting on numerous occasions.

15. On six occasions between May 19 and June 9, 1972 LEONARD HARRISON was observed meeting with JANE DOE.

16. On April 20, 1972 ARTHUR FRANGELLO was observed meeting with LOUIS VISCONTI.

17. Between February 10 and May 8, 1972 on more than 10 occasions LOUIS VISCONTI was observed meeting with MICHAEL CAMPOREALE. CAMPOREALE is a young man who wears mod clothes and has a mod hair style and drives a black over blue Dodge.

18. On May 15, 16, 18, 24, 25, 30 and June 6, 1972 JANE DOE was observed meeting with JOHN DOE. On May 24 and 30 JOHN DOE was observed handing JANE DOE a package.

19. On May 16, 17, 18 and 30 and June 6, 1972 JANE DOE was observed meeting with PATRICIA ANN HYATT. On May 18, 1972 LOUIS VISCONTI was present at this meeting.

20. On March 30 and April 4, 1972 PATRICIA ANN HYATT was observed meeting with MICHAEL CAMPOREALE.

21. On May 4, 8, 9, 15 and 16, 1972 LOUIS VISCONTI was observed meeting with JOHN DOE. On May 9, 1972 JOHN DOE was observed meeting with MICHAEL CAMPOREALE. 339a

22. On April 27, 1972 MICHAEL CAMPOREALE was followed from the Rockland County area to the Yonkers area of Westchester County. On that night CAMPOREALE left a paper bag behind a Great Eastern Mills store located in the Yonkers area. After he left the bag agents of the Federal Bureau of Investigation opened the bag, observed the contents and replaced it. The contents of the bag was policy gambling material. On that night GERALD POLITI was observed picking up the bag and driving away with it.

23. On May 30, 1972 PATRICIA ANN HYATT was followed across the Hudson River into the Westchester County area. She was observed by agents of the Federal Bureau of Investigation traveling to a secluded area of a public golf course located near the Bronx-Westchester County border. HYATT placed a paper bag under a hollowed out log. Agents of the Federal Bureau of Investigation were able to open the bag and observe the contents after HYATT had left the area. Again, the contents of the bag was policy gambling material. After a period of time had passed GERALD POLITI lifted the log, removed the paper bag and drove away.

SYNOPSIS

A policy gambling operation is located in Poughkeepsie which is controlled by LONNIE JOHNSON and J.H. CARRINGTON, JR. At present JOHN DOE picks up the policy material and the gambling receipts from this "spot". JOHN DOE then travels to the Newburgh area. In the Newburgh area two policy operations are operating. One controlled by EDDIE WASHINGTON and LEONARD HARRISON with a "spot" at 199 South Street and one controlled by ARTHUR FRANGELLO. Each day WASHINGTON or HARRISON gives the money to LOUIS VISCONTI and policy work to JANE DOE. Also each day FRANGELLO gives the

money to LOUIS VISCONTI and the policy work to JANE DOE. JOHN DOE meets with LOUIS VISCONTI each day and gives him the policy gambling receipts from the Poughkeepsie "spot." JOHN DOE meets with JANE DOE each day and gives her the policy gambling work from the Poughkeepsie "spot". JANE DOE then meets with PATRICIA ANN HYATT and gives her the policy work from both the Newburgh and Poughkeepsie gambling "spots." PATRICIA ANN HYATT then brings this material across the Hudson River to a location in Westchester County where she leaves it for GERALD POLITI. In an earlier stage of this operation MICHAEL CAMPOREALE performed the functions of PATRICIA ANN HYATT by receiving the policy gambling work from Poughkeepsie from LOUIS VISCONTI and the policy gambling material from the Newburgh operations from PATRICIA ANN HYATT and bringing it to Westchester County for delivery to GERALD POLITI.

WHEREFORE, it is respectfully requested that search warrants and arrest warrants as requested specifically in the affidavits attached, issue.

Bob C. Reutter

BOB C. REUTTER
Special Agent
Federal Bureau of Investigation

Sworn to before me this
13 day of June, 1972.

HAROLD BABY

UNITED STATES MAGISTRATE

EXHIBIT F - SEARCH WARRANT AND SUPPORTING AFFIDAVIT OF J.A. TRIPODO ANNEXED TO FOREGOING AFFIDAVIT

SEARCH WARRANT

County COURT

STATE OF NEW YORK

COUNTY OF Orange

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

TO ANY POLICE OFFICER IN THE NEW YORK STATE POLICE, STATE OF NEW YORK.

Proof by Affidavit, having been made this day before me by Investigator J. A. TRIPODO, of the New York State Police, at Troop F Headquarters, Middletown, New York, that there is reasonable cause for believing that property constituting evidence of a crime or tending to show that a particular person committed a crime and possession of which is unlawful.

YOU ARE THEREFORE COMMANDED AND DIRECTED TO MAKE AN IMMEDIATE SEARCH, between the hours of 6:00 a.m. and 9:00 p.m. of the person of EDDIE WASHINGTON, and LEONARD HARRISON and the residence 199 South Street, Newburgh, New York, second floor apartment, that being a 3 story brick building, also for any other person or persons who may be found in such premises, to have such property in his possession, or under his control, for monies, papers, pads, tablets, adding machines, and any other paraphernalia used to record number bets or horse bets, said bets being possessed illegally. No notice of intent or Authority need be given prior to the execution of this warrant.

You are directed, and if you find such property or any part thereof, to bring it before me at my office without delay.

This search warrant signed and dated at the Village of Goshen, County of Orange, this 13th day of June, 1972.

COUNTY COURT
COUNTY OF ORANGE

IN THE MATTER

OF

The application of Investigator J. A. Tripodo, a Police Officer, of the New York State Police, to wit an Investigator assigned to Troop F Headquarters at Middletown, New York, for a warrant authorizing the search of EDDIE WASHINGTON, LEONARD HARRISON, and the second floor apartment at 199 South Street, Newburgh, New York, that being a 3 story brick building, also for any other persons who may be in the second floor apartment of the above mentioned premises, for the following property, monies, pads, papers, tablets, adding machines, tabulating equipment, and any other paraphernalia used in association with the recording of number bets or horse bets, which are used to promote gambling, which constitutes evidence of a crime, possessed with the intent to be used in the commission of a crime of Promoting Gambling in the 1st or 2nd Degree. Such property is used or possessed with the intent to be used as a means of committing a crime or tending to show that a particular person committed a crime.

STATE OF NEW YORK :
ss.:
COUNTY OF ORANGE :

J. A. TRIPODO, being duly sworn, deposes and says;

1. That I am an Investigator assigned to the Bureau of Criminal Investigation, at Troop F Headquarters, Middletown, New York, and am presently assigned to investigate illegal gambling operations in Orange County.

2. I have been told by a confidential informant, who has supplied reliable information in the past, and who I believe is telling me the truth, that EDDIE WASHINGTON and LEONARD HARRISON are conducting a large scale gambling operation in the Newburgh area, having numerous persons accepting illegal policy bets, with such policy bets being turned into EDDIE WASHINGTON and LEONARD HARRISON. This confidential source of information told me that EDDIE WASHINGTON is presently using SECOND FLOOR REAR APARTMENT 199 South Street, as a base for this illegal gambling operation. My confidential

informant has supplied information in the past, specifically on an illegal policy operation being conducted by JAMES WILLIAMS, which resulted in the arrest and subsequent conviction of JAMES WILLIAMS and 6 other subjects for operating a policy bank in Newburgh, New York, on 6/7/67. This informant also supplied information that led to the arrest of QUINTIN SKIPWITH, on 5/12/72, for Possession of Gambling Records 1st Degree and Promoting Gambling 1st Degree, which case is still pending court action.

3. Based upon my assignment, I have conducted surveillances in the Newburgh area for the past 2 months, concerning the activities of EDDIE WASHINGTON, and LEONARD HARRISON. On 4/4/72, I observed LEONARD HARRISON meet an unknown male in the vicinity of Broadway, Newburgh, New York, and HARRISON went over to the unknown male and received a small white envelope from this unknown male. HARRISON then placed the envelope in his pocket and I followed HARRISON to WILLIAMS St., where he met with one JOHN LOSINO, known gambler conversed with LOSINO for a short while, then as he departed and was getting in his vehicle I seen him put his hand inside of his shirt, as if carrying something inside the shirt. I then observed HARRISON go to 199 South Street, Newburgh, New York, walk into a Beauty Salon at 199 South Street, meet with one EDDIE WASHINGTON and the both subjects entered the door along side of the Beauty Salon at 199 South St., Newburgh, New York, go up to the second floor and remain therein for approximately 20 minutes. Both subjects then came out of 199 South St., at approximately 4:50 p.m. I then followed HARRISON to Cornwall, New York, where he met with one PATRICIA HYATT, got out of his vehicle on Angola Rd,, in Cornwall, went over to PATRICIA HYATT'S

vehicle and handed her a small package through the window of her car. I then followed HARRISON back to South St., where he met EDDIE WASHINGTON for a short period in front of 199 South St., then departed.

4. On 4/5/72, I conducted surveillance on LEONARD HARRISON, and observed him meet the same unknown male on Broadway in City of Newburgh, at approximately the same time, then meet with one JOHN LOSINO Williams St., in the City of Newburgh, then go to South St., and with EDDIE WASHINGTON, enter the second floor at 199 South St., Newburgh, New York, then after approximately 20 minutes I observed LEONARD HARRISON leave 199 South St., and followed him to 257 Washington St., Newburgh, New York, where he met with one ARTHUR FRANGELLO, and after he went into 257 Washington St., with FRANGELLO, departed within 5 minutes. I then observed HARRISON go to the Grand Union parking lot, Cornwall, New York, where he met with one PATRICIA HYATT, got out of his car and got into the car of PATRICIA HYATT, then after remaining in her vehicle for several minutes departed and went back to 199 South St., Newburgh,New York, where he met with EDDIE WASHINGTON.

5. On 4/6/72 and 4/7/72, I also conducted surveillance on LEONARD HARRISON and I observed him doing precisely the same thing, meeting the same people at approximately the same time, and on both these dates met EDDIE WASHINGTON at 199 South St., Newburgh, New York, at precisely the same time and also met with one PATRICIA HYATT, in the vicinity of Cornwall at approximately the same time, getting into her vehicle on both of these dates.

6. On 5/24/, 5/25/, 5/26/71 and 6/6, 6/7, 6/8, and 6/9/71, I conducted surveillance at 199 South St., Newburgh, New York, and

on these dates, I observed EDDIE WASHINGTON stand in front of 199 South St., Newburgh, New York and wait for LEONARD HARRISON to arrive and when he arrived both subjects would enter 199 South Street, looking about in a suspicious manner before entering the apartment on the second floor of the same address. On two occasions I observed an unknown female meet with WASHINGTON and as WASHINGTON departed from the female I observed a white envelope in his right hand pocket of his jacket.

7. In reference to PATRICIA HYATT, mentioned above, I arrested her on 11/22/71, for Promoting Gambling 1st Degree and Possession of Gambling Records 1st Degree after she had met with one ARTHUR FRANGELLO earlier on that date in Newburgh, New York and had received a small manila package from him, containing numerous policy bets, which were confiscated after her arrest on that same date.

8. Concerning ARTHUR FRANGELLO, also mentioned in above paragraph, he was arrested by me on 11/23/71, for Promoting Gambling 1st Degree and Possession of Gambling Records 1st Degree, in the City of Newburgh, in reference to a policy operation. FRANGELLO is a known gambler in the Newburgh area, with two previous convictions, one in 1958 and one in 1962, for Gambling violations.

9. The records of the Newburgh Police Department revealed that on 8/21/69, and again on 10/16/69, EDDIE WASHINGTON was arrested for Possession of Gambling Records 2nd Degree. The records indicate one conviction for WASHINGTON, that being on 3/11/70 for Possession of Gambling Records 2nd Degree, in which he paid a $200.00 fine.

10. Based on my experience as an expert in the field of illegal gambling operations and primarily in the field of policy operations, it is my opinion that EDDIE WASHINGTON and LEONARD HARRISON, are presently engaged in an illegal policy operation, accepting illegal policy bets from various unknown persons who are acting as runners for them, and in turn are turning their

fashion as was the case when PATRICIA HYATT and ARTHUR FRANGELLO were arrested in November 1971, and at that time I had observed ARTHUR FRANGELLO turn the package into PATRICIA HYATT and I had observed PATRICIA HYATT eventually turn the package over to one PHILIP POLITI. It is my opinion that EDDIE WASHINGTON and LEONARD HARRISON are using the second floor apartment at 199 South St., as a base for this illegal gambling operation they are conducting. This is based on the meets between all of these subjects at precisely the same time on each day, and the fact that when these subjects meet they appear to be acting in a suspicious manner. And in addition to my personal surveillances, it appears that what I observed between WASHINGTON and HARRISON, is precisely what the confidential source of information listed above, told me they were doing.

11. Based upon the aforegoing information and upon my belief that there is reasonable cause to believe such property is used and possessed with the intent to be used as a means of committing a crime or offense, or property constituting evidence of a crime may be found in the possession of EDDIE WASHINGTON, or LEONARD HARRISON, or the second floor rear apartment at 199 South St., Newburgh, New York, which is a 3 story brick building, with the Exotic Beauty Salon located on the first floor.

12. Therefore, I respectfully request that the court issue a warrant and order of seizure in the form annexed, authorizing the search of EDDIE WASHINGTON, LEONARD HARRISON, and 199 South St., Newburgh, New York, directing that if such property or evidence of any part thereof be found, that it be seized and brought before the court for any disposition that the court may deem proper.

13. The mentioned property for which a search warrant is being made, is of the type and size that can easily and quickly be destroyed and disposed of, and deponent has knowledge that said property will be destroyed if notice of authority and purpose of intention is given or if not seized immediately, therefore, I respectfully request that no notice of intent be given prior to the execution of this sought after search warrant.

14. No previous application in this matter has been made in this or any other court, Judge, Justice, or Magistrate.

J. A. Tompkins

Sworn to before me this

13th day of June,

1972.

County Judge

Orange County New York

FEDERAL SEARCH WARRANT AND SUPPORTING AFFIDAVIT OF BOB C. REUTTER

United States District Court

FOR THE

DISTRICT OF NEW JERSEY

Magistrate's Docket No.

UNITED STATES OF AMERICA

Case No.

vs.

CERTAIN PREMISES KNOWN AS 77 BROADWAY, PARK RIDGE, NEW JERSEY, A TWO-STORY, ONE FAMILY RESIDENTIAL DWELLING

AFFIDAVIT FOR SEARCH WARRANT

BEFORE Honorable Bruce F. Banta, United States Magistrate, District of
Name of Commissioner Magistrate Address of Commissioner Magistrate New Jersey

The undersigned being duly sworn deposes and says:

That he (has reason to believe) (is positive)[1] that (on the person or) (on the premises known as)

77 BROADWAY, PARK RIDGE, NEW JERSEY

in the District of NEW JERSEY

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency.
describe property

which are evidence, instrumentalities and fruits of the crimes of
here give alleged grounds for search and seizure
conspiracy and interstate travel in aid of a racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 371, 1952, 1084 and 2

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are set forth in the attached affidavit.

Signature of Affiant.

Official Title, if any.

Sworn to before me, and subscribed in my presence, , 19

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	
-v-	AFFIDAVIT
MICHAEL ROMAN	
THE PREMISES KNOWN AS 77 BROADWAY, PARK RIDGE, NEW JERSEY, A TWO (2) STORY, ONE FAMILY RESIDENTIAL DWELLING.	

DISTRICT OF NEW JERSEY, SS:

BOB C. REUTTER, being duly sworn deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such, and that he submits this affidavit in support of applications for search warrants of the above locations and arrest warrants for the above named individuals.

1. I have been a Special Agent of the Federal Bureau of Investigation for the past three years. During that time I have participated in more than 30 separate and distinct gambling investigations involving numerous subjects. As a result I have become familiar with illegal gambling businesses, their methods of operation and the records commonly used by bookmakers and other gamblers.

2. I am in charge of the investigation of the gambling activities of MICHAEL ROMAN, LOUIS VISCONTI and others. During the course of this investigation I have received information from two confidential informants.

3. Informant number one is a person who has been supplying information concerning gambling cases to the Federal Bureau of Investigation for greater than two years. This informant, whose information has been consistently corroborated, has been contacted on a regular basis at least two times each month. Information given to the Federal Bureau of Investigation by this informant has led to 15 arrests for Federal gambling violations.

4. Confidential informant number two has been supplying information concerning gambling offenses to local

and federal authorities for longer than one year. This person who has been contacted by the Federal Bureau of Investigation on a three times per month basis, has given data which has been consistently corroborated and which has resulted in 10 arrests for gambling offenses and one successful wiretap of a criminal gambling operation.

5. During the month of May, 1972 informant number one advised the Federal Bureau of Investigation that he was a personal acquaintance of Michael Roman and that he had many opportunities to talk to him. During May of 1972 this informant told the Federal Bureau of Investigation that Roman said that he, Roman, was in charge of the policy operations in Orange and Dutchess counties of New York state and that he, Roman, did the work on the Orange and Dutchess policy at the end of each day. This informant advised that Roman himself prepared tabulations which he gave to a runner in the early morning hours. The preparation of these tabulations, or tapes, Roman said, was done on the west side of the Hudson River. Roman indicated that because of numerous raids by the New York State Police that the policy work which he did would not be done in New York.

6. Informant number two who also knows Michael Roman and has had an opportunity to speak with him told agents of the Federal Bureau of Investigation that he knew, through conversations with MICHAEL ROMAN, that ROMAN had control over the policy gambling operations in the Newburgh, Beacon, and Poughkeepsie areas of New York state. ROMAN also told this person that an individual known as Lou Visconte would take the money from the Newburgn, Beacon, Poughkeepsie gambling operations to ROMAN at the end of each day. On the next day either Lou Visconte or the person who brought ROMAN the policy gambling material from the Dutchess and Orange county gambling operations would return with 'the ribbons." Both informant number one and informant number two indicated to the Federal Bureau of Investigation that they were certain, because of their conversations with Roman, that he was a part of a bigger

gambling operation.

7. From my experience as an agent of the Federal Bureau of Investigation investigating policy gambling operations I know that a policy bet is a wager on a series of numbers placed by a gambler with a person called a runner. This runner, having accepted bets from several gamblers, takes these bets to a location called a "spot" where the work product of numerous runners is collected. After all the bets are collected in the spot an individual commonly called a pickup man will collect bets from various "spots" and take them to a location commonly known as a "policy bank". At the policy bank the accounting for the days wagers is done by a trusted employee of the gambling enterprise. This person will compute the daily receipts from each runner and the number of "hits" or wins by a gambler and the portion of the profits to be split among "spots" and the "runners". Another person, but not the same person as the one who collects the wagering information, will collect the money which has been bet with the runners, from each spot and bring this money to a high level figure within the gambling enterprise. Because of the danger of an arrest and seizure of policy gambling material the money will never travel with the policy work, but will always be delivered by an individual different from the person delivering the policy work to the "bank". The delivery of the gambling data and the money takes place at the end of the normal working day, after all the wagers have been placed. On the very next morning the tabulations (which are called in the gambling parlance "ribbons") are given to a runner, along with that amount of money which represents the wagers won by betters and the portion of the proceeds due to the spots and runners. This "runner" will then deliver back to the "spots", the "ribbons" and cash.

8. Since the 13th of January agents of the Federal Bureau of Investigation have observed on an almost daily

basis policy gambling operations, or "spots", located in Poughkeepsie and Newburgh, New York. These observations indicate that the Poughkeepsie gambling operation employs more than nine "runners" and the Newburgh operation employs more than 10 runners.

9. On April 25, 1972 and on May 19, 22 and 24, 1972 Louis Visconte was observed by agents of the Federal Bureau of Investigation picking up material from the policy spots in Newburgh and Poughkeepsie. On each of these occasions Visconte was observed meeting with MICHAEL ROMAN in ROMAN'S automobile. On two of the occasions, May 22 and 24 Visconte was observed carrying a bag into ROMAN'S car and leaving a short while thereafter without the bag. All of these meetings took place in the evening hours of the day.

10. On the 19th of May, 1972 MICHAEL ROMAN was observed meeting with Louis Visconte in the early morning hours. The meeting was brief and shortly after the meeting terminated Visconte returned from Rockland county, where the meeting took place to the Beacon and Poughkeepsie "spots".

11. On the 16th and 17th of May, 1972 an unknown female was observed taking the policy bets from the spots in Newburgh. This same unknown female was observed meeting with MICHAEL ROMAN in the early morning hours of the 17th and 18th of May, 1972 and shortly after this meeting she was observed returning to the area of the Beacon and Poughkeepsie gambling spots.

12. On several occasions during the month of May agents of the Federal Bureau of Investigation observed the policy gambling work being taken from the Poughkeepsie and Newburgh "spots" to the southeast portion of Westchester county. On Wednesday the 24th of May, 1972 this was again observed. On this same night in the late evening hours MICHAEL ROMAN was observed leaving his home in Nyack, New

York and traveling to a deserted telephone booth located in southeast Westchester county. ROMAN entered the booth stayed a very few seconds and left. An inspection of the phone booth indicated that the telephone was inoperative and that the interior mechanism was missing from the telephone box. After having left the telephone booth MICHAEL ROMAN was observed traveling to a two story one family dwelling located at 77 Broadway, Park Ridge, New Jersey. ROMAN was also observed at this home on the 26th, 27th, 29th and 31st of May 1972, at almost precisely the same time.

13. Since April of 1969 MICHAEL ROMAN has been arrested eight times for gambling crimes, all of which, except one, were felony charges. Two of these arrests in 1971, which were affected by the New York State Police, took place in a policy "bank". Most recently, during the month of May, 1972, ROMAN was arrested by the New York State Police. At that time he had on his possession policy gambling ribbons.

WHEREFORE, it is respectfully requested that search warrants and arrest warrants as requested specifically in the affidavits attached, issue.

Bob C Reutter

BOB C. REUTTER
Special Agent
Federal Bureau of Investigation

Sworn to before me this 6th day of June, 1972

Bruce Banta

UNITED STATES MAGISTRATE

BRUCE P. BANTA
U. S. Magistrate
[illegible] E. Salem Street

PTP:fch

AFFIDAVIT OF PERSONAL SERVICE

3540

STATE OF NEW YORK
COUNTY OF NEW YORK } SS

..... being duly sworn,

deposes and says that he is employed in the office of .....

..... United States Attorney for

the Southern District of New York, attorney for the .....

herein.

That on the ..... day of ....., 19 ....., he did serve a true copy of

the hereto annexed .....

.....

on the office of .....

attorney for the ..... herein, located at .....

.....

Borough of ....., City of New York, by leaving a true copy of the same with the person in charge of said office, there being no one present who was authorized to give an admission of service.

.....

Sworn to before me this

..... day of ....., 19.....

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF NEW YORK } SS

..... being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the ..... day of ....., 19 ....., he served a copy of the within

.....

by placing the same in a properly franked envelope addressed to: .....

.....

.....

.....

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Sworn to before me this

..... day of ....., 19

Form No. USA-333-270
(Rev. 10-25-65)

You will please take notice that a ..... of which the within is a copy, was this day duly entered in the within entitled action, in the office of the Clerk of this Court.

Dated, N. Y., ..., 19....

Yours, etc.,

.....
United States Attorney
Attorney for .....

To

.....
Attorney for .....

Sir:

Please take notice that the within ..... will be presented for settlement and signature to the Honorable ..... United States District Judge, at the office of the Clerk, Room 601, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the ..... day of ....., 19...., at 10:30 o'clock in the ..... noon, or as soon thereafter as counsel can be heard.

Dated, N. Y., ..., 19....

Yours, etc.,

.....
United States Attorney
Attorney for .....

To

.....
Attorney for .....

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

MICHAEL ROMAN,

Defendant

COMPLAINT

WHITNEY NORTH SEYMOUR, JR.
TEL. 264-3311 United States Attorney
Attorney for SDNY

Due service of a copy of the within is hereby admitted.

New York, ..., 19....

.....
Attorney for

To

.....
Attorney for

TPI—SS—1-15-71—20.2—6029

Form A. O. 10a

AFFIDAVIT OF GERALD L. GOETTEL FOR SEARCH WARRANT AND SEARCH WARRANT

Affidavit for Search Warrant

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Commissioner's Docket No.....

UNITED STATES OF AMERICA

vs.

THE PREMISES KNOWN AS THE FIRST FLOOR OF 22 NORTH PERRY STREET, POUGHKEEPSIE, NEW YORK, A TWO STORY RED BRICK RESIDENTIAL DWELLING

Case No.....

AFFIDAVIT FOR SEARCH WARRANT

BEFORE GERARD L. GOETTEL
Name of Commissioner

Southern District of New York
Address of Commissioner

The undersigned being duly sworn deposes and says:

That he (~~has reason to believe~~) (is positive)[1] that (~~on the person of~~) (on the premises known as)

the first floor of 22 North Perry Street, Poughkeepsie, New York, a two story red brick residential dwelling

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling
here describe property
records, records and list of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371
here give alleged grounds for search and seizure

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are ~~as follows~~ set forth in the attached affidavit.

Signature of Affiant.

Official Title, if any.

Sworn to before me, and subscribed in my presence, , 19

Sworn to before me, and subscribed in my presence, , 19

United States Commissioner.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

THE PREMISES KNOWN AS THE FIRST FLOOR OF 22 NORTH PERRY STREET, POUGHKEEPSIE, NEW YORK, A TWO STORY RED BRICK RESIDENTIAL DWELLING

Commissioner's Docket No. 72-

Case No. 1358

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by BOB G. REUTTER, Special Agent, FBI

that he { has reason to believe } that { on the premises known as }

the first floor of 22 North Perry Street, Poughkeepsie, New York, a two story red brick residential dwelling

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

(here describe property)

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

(here give alleged grounds for search and seizure)

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the { person / premises } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { person / place } named for the property specified, serving this warrant and making the search { in the daytime / at any time in the day or night } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 28 day of Aug., 1972

TRUE COPY

U.S. Commissioner.

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched { the person / the premises } described in the warrant and

I left a copy of the warrant with .....
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this day of , 19 .

U. S. Commissioner.

AFFIDAVIT OF GERARD L. GOETTEL FOR SEARCH WARRANT
AND SEARCH WARRANT

Form A. O. 166 Search Warrant 359a

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Magistrate's Commissioner's Docket No. 77-

UNITED STATES OF AMERICA

Case No. 1-114

VS.

Post

John Doe, believed to be DOROTHY L. PLAIR, 148 WASHINGTON STREET, NEWBURGH, NEW YORK a negro female about 35 years of age, about 5'6" tall, about 175 pounds, who drives a 1965 dark green Pontiac Sedan, New York license FF-42 registered to Dorothy L. Plair 148 Washington St. Newburgh N.Y.

AFFIDAVIT FOR SEARCH WARRANT

BEFORE GERARD L. GOETTEL, Magistrate, Southern District of New York

Name of Commissioner Address of Commissioner

The undersigned being duly sworn deposes and says:

That he (has reason to believe) (~~is positive~~)[1] that (on the person of) (~~or the premises known as~~) John Doe, believed to be DOROTHY L. PLAIR,

148 WASHINGTON STREET, NEWBURGH, NEW YORK

in the Southern District of New York,

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

(here describe property)

which are evidence, instrumentalities and fruits of the crimes and conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

(here give alleged grounds for search and seizure)

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are ~~as follows:~~ set forth in the attached affidavit.

Signature of Affiant

Official Title, if any.

Sworn to before me, and subscribed in my presence, , 19

United States Commissioner.

[1] The Federal Rules of Criminal Procedure provides "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it

Form A. O. 93 (Revised June 1964) Search Warrant

360a

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Magistrate's ~~Commissioner's~~ Docket No. 72.

Case No. 1364

vs.

Jane Doe, believed to be DOROTHY L. PLAIR, 148 WASHINGTON STREET, NEWBURGH, NEW YORK, a negro female about 35 years of age, about 5'6" tall, about 120-125 pounds who drives a 1966 4 door green Pontiac two door sedan N.Y. License FT4286, registered to Dorothy L. Plair, 148 Washington St., Newburgh, N.Y.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by BOB C. REUTTER, Special Agent, FBI

that he { has reason to believe / ~~is positive~~ } that { on the person of / ~~on the premises known as~~ } Jane Doe, believed to be DOROTHY L. PLAIR,

148 WASHINGTON STREET, NEWBURGH, NEW YORK

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the { person / ~~premises~~ } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { person / ~~place~~ } named for the property specified, serving this warrant and making the search { in the daytime / ~~at any time in the day or night~~ } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this day of [illegible], 19[illegible]

GERARD L. GOETTEL
United States Magistrate
Southern District of New York

A TRUE COPY

U.S. Commissioner, Magistrate

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched { the person / the premises } described in the warrant as

I left a copy of the warrant with .....
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this day of , 19 .

U. S. Commissioner.

United States District Court

362a

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

THE PREMISES LOCATED ON THE SOUTH SIDE OF GIDNEY AVENUE, NEWBURGH, NEW YORK, BETWEEN CHAMBERS STREET (ON THE EAST) AND LANDER STREET (ON THE WEST), IMMEDIATELY TO THE EAST OF A PREMISES KNOWN AS 25 GIDNEY STREET, MORE PARTICULARLY DESCRIBED AS A ONE STORY ONE FAMILY HOUSE WITH GRAY IMITATION BRICK SIDING, HAVING TWO FRONT WINDOWS COVERED WITH WIRE MESH, ONE FRONT DOOR WITH A SMALL GLASS WINDOW PLACED DIAGONALLY WITHIN A WOODEN FRAME

Commissioner's Docket No.

Case No.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by

that he { has reason to believe / ~~is positive~~ } that { ~~on the person or~~ on the premises ~~known as~~ }

located on the South side of Gidney Avenue, Newburgh, New York, between Chambers Street (on the East) and Lander Street (on the west), immediately to the east of a premises known as 25 Gidney Street, more particularly described as a one story, one family house with grayimitation brick siding, having two front windows covered with wire mesh, one front door with a small glass window placed diagonally within a wooden frame

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

(here describe property)

which are evidence; instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

(here state allegd grounds for search and seizure)

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the { ~~person~~ / premises } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { ~~person~~ / place } named for the property specified, serving this warrant and making the search { in the daytime / ~~at any time in the day or night~~ } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this day of , 19

Form A. O. 104 — Affidavit for Search Warrant

United States District Court

363a

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Commissioner's Docket No. 72

Case No. 1357

UNITED STATES OF AMERICA

vs.

E PREMISES LOCATED ON THE SOUTH SIDE OF DNEY AVENUE, NEWBURGH, NEW YORK, BETWEEN AMBERS STREET (ON THE EAST) AND LANDER REET (ON THE WEST), IMMEDIATELY TO THE EAST A PREMISES KNOWN AS 25 GIDNEY STREET, MORE RTICULARLY DESCRIBED AS A ONE STORY ONE FAMILY HOUSE WITH GRAY IMITATION ICK SIDING, HAVING TWO FRONT WINDOWS COVERED WITH WIRE MESH, ONE FRONT DOOR WI BEFORE A SMALL GLASS WINDOW PLACED DIAGONALLY WITHIN A WOODEN FRAME

AFFIDAVIT FOR SEARCH WARRANT

Name of Commissioner GERARD L. GOETTEL Address of Commissioner Southern District of New York

The undersigned being duly sworn deposes and says:

That he ~~(has reason to believe)~~ (is positive)[1] that ~~(the person of)~~ (on the premises ~~known~~)

ocated on the South side of Gidney Avenue, Newburgh, New York, between hambers Street (on the East) and Lander Street (on the west), immediately o the east of a premises known as 25 Gidney Street, more particularly escribed as a one story, one family house with gray imitation brick siding, aving two front windows covered with wire mesh, one front door with a mall glass window placed diagonally within a wooden frame

in the Southern District of New York

there is now being concealed certain property, namely (here describe property) gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

which are evidence, instrumentalities and fruits (here give alleged grounds for search and seizure) of the crimes and conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are ~~as follows~~ set forth in the attached affidavit.

Signature of Affiant.

Official Title, if any.

Sworn to before me, and subscribed in my presence, , 19

United States Commissioner.

[1] The Federal Rules of Criminal Procedure ...

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

A PREMISES KNOWN AS 15 EASTVIEW AVENUE , YONKERS, NEW YORK, A TWO STORY WHITE ASBESTOS SHINGLE RESIDENTIAL DWELLING, IMMEDIATELY TO THE SOUTH OF A PREMISES KNOWN AS 19 EASTVIEW AVENUE, YONKERS,N.Y.

Commissioner's Docket No.

Case No. 137

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by BOB C. REUTTER, Special Agent, FBI

that he {~~has reason to believe~~ / ~~xxpositivax~~ is positive} that {~~on the person or~~ / on the premises known as}

15 Eastview Avenue, Yonkers, New York, a two story white asbestos shingle residential dwelling, immediately to the south of a premises known as 19 Eastview Avenue, Yonkers, N. Y.

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

(here describe it)

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

(here give alleged grounds for search and seizure)

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the {~~person~~ / premises} above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the {~~person~~ / place} named for the property specified, serving this warrant and making the search {~~in the daytime~~ / ~~xxxxxxxxxxxxxxxxxxxx~~ any time day or night} and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this day of , 19

U. S. Commissioner.

Form A. O. 106 — Affidavit for Search Warrant

United States District Court

365a

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Commissioner's Docket No. .....

Case No. 1356

UNITED STATES OF AMERICA

vs.

A PREMISES KNOWN AS 15 EASTVIEW AVENUE, YONKERS, NEW YORK, A TWO STORY WHITE ASBESTOS SHINGLE RESIDENTIAL DWELLING, IMMEDIATELY TO THE SOUTH OF A PREMISES KNOWN AS 19 EASTVIEW AVENUE, YONKERS, N.Y.

AFFIDAVIT FOR SEARCH WARRANT

BEFORE GERARD L. GOETTEL
Name of Commissioner

Southern District of New York
Address of Commissioner

The undersigned being duly sworn deposes and says:

That he ~~(has reason to believe)~~ (is positive)[1] that ~~(on the person or)~~ (on the premises known as)

15 Eastview Avenue, Yonkers, New York, a two story white asbestos shingle residential dwelling, immediately to the South of a premises known as 19 Eastview Avenue, Yonkers, N. Y.

in the Southern District of New York

there is now being concealed certain property, namely gambling paraphernalia, gambling records, records and lists of participating gamblers and other personnel, names and addresses of persons who transmit bets and wagers to the criminal gambling operation, counting and run-down sheets, books of account, checks, money orders and United States currency

(here describe property)

which are evidence, instrumentalities and fruits of the crimes of conspiracy and interstate travel in aid of racketeering enterprise (gambling) and in transmission of wagering information in violation of Title 18, United States Code, Sections 1955 and 371

(here give alleged grounds for search and seizure)

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are ~~as follows:~~ set forth in the attached affidavit.

Signature of Affiant.

Official Title, if any.

Sworn to before me, and subscribed in my presence, , 19

United States Commissioner.

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41(c))

MEMORANDUM OF LASKER, D.J. DATED JUNE 8, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

v.

ANTHONY POLITI, GERALD POLITI, PHILIP POLITI, MICHAEL ROMAN, ROBERT PETERS, MICHAEL CAMPOREALE, ALPHONSE CUZZO, ARTHUR FRANGELLO, LEONARD HARRISON, LAWRENCE JOHNSON, LOUIS VISCONTI, EDDIE WASHINGTON and HARRY WEIS,

73 Cr. 56

MEMORANDUM

Defendants.
- -X

APPEARANCES:

VINCENT LANNA, ESQ.
50 Riverdale Avenue
Yonkers, New York
Attorney for Defendant Anthony Politi

IRVING ANOLIK, ESQ.
225 Broadway
New York, New York
Attorney for Defendants Philip Politi, Gerald Politi and Harry Weis

[illegible], ESQ.
335 Broadway
New York, New York
Attorney for Eddie Washington, Leonard Harrison and Lawrence Johnson

PATRICK M. WALL, ESQ.
36 West 44th Street
New York, New York
Attorney for Defendants Arthur Frangello and Louis Visconti

ROBERT P. LEIGHTON, ESQ.
15 Park Row
New York, New York
Attorney for Defendant Michael Camporeale

EDWARD S. PANZER, ESQ.
299 Broadway
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Attorney for Defendant Robert Peters

HERALD PRICE FAHRINGER, ESQ.
One Niagra Square
Buffalo, New York
Attorney for Defendant Michael Roman

GEORGE J. BELLANTONI, ESQ.
190 East Post Road
White Plains, New York
Attorney for Defendant Anthony Cuzzo

LASKER, D.J.

Defendants Anthony Politi, Michael Politi, Michael Roman, Robert Peters, Alphonse Cuzzo and Arthur Frangello have variously moved to suppress evidence and to attack the validity of the indictment. When applicable, each defendant (including those not named above) has adopted motions made by others. This Memorandum disposes of such motions. Motions for Bills of Particulars and Discovery have previously been determined.

Anthony Politi

1. Motion on grounds search warrant allegedly altered.

Politi's principal motion is to suppress the evidence secured in the "Bobbin Inn" raid on the ground that the warrant authorizing the search, dated January 20, 1971, was defective on its face in describing the premises to be searched and was altered thereafter to accord with the proper description.

It is undisputed that the warrant presented to the court correctly describes the cottage which was actually searched as being in the "extreme northeast corner of the Bobbin Inn Country Club and Day Camp". Politi claims, however, that in its original condition at the time of the search, the warrant actually described

the premises as being in the "extreme southeast corner of the Bobbin Inn Country Club and Day Camp".

An evidentiary hearing was held on this motion and all others which involved factual disputes. I find that Politi has not met the burden of establishing, even by a preponderance of evidence, that the warrant of January 26, 1971, which authorized the search of the Bobbin Country Club cottage was defective at the time of issuance or was thereafter altered. Politi was the sole witness to testify that at the time of the search, the warrant described the premises as being at "the extreme southeast corner of the Country Club". His story was that at the time of the search he asked one of the officers to show him the warrant; that the officer did so; that the description contained the word "southeast" rather than "northeast"; that knowing that this was incorrect he brought it to the attention of co-defendant Roman and one Maselli, an associate who was present; that they also remarked that the warrant misdescribed the premises; that thereafter Politi on one or more occasions asked the arresting officer and personnel of the District Attorney's Office of Westchester County for a copy of the search warrant and that he was refused a copy.

I do not credit Politi's version. His testimony was altogether evasive in tone and studded with refusal

to give straight answers to critical questions.

Furthermore, Politi's assertions were directly and frontally contradicted by the testimony of William McKenna, Chief of the Rackets Bureau of the District Attorney's Office of Westchester County, whose testimony I find altogether credible. McKenna stated that he personally prepared the affidavit and search warrant in question, including the description of the premises. It is worthy of note that McKenna is not only an attorney but was formerly a surveyor and draftsman. McKenna's notes from which he prepared the affidavit and search warrant were produced and placed in evidence as Exhibit 7. They contain the proper description of the premises as being located in the excreme northeast corner. The notes, which clearly support McKenna's testimony, appear to establish conclusively that the warrant was notdefective on its face at the time of the search. McKenna also testified unequivocally that he did not, as Politi contended, prevent Politi from being furnished with or reading a copy of the warrant.

In addition to the fact witnesses, both Politi and the Government produced expert documentary witnesses on the question whether the search warrant was altered. As to be expected, the defendants' highly qualified witness, Mrs. Pearl Teitel -- testified that in her

opinion the document had been altered, and the Government's equally qualified expert, Joseph P. McNally, stated that, in his opinion, the document had not. Without attempting to restate the testimony of the experts in detail, it is sufficient to observe that even accepting at face value Mrs. Teitel's testimony that the document had been altered, she, nevertheless, admitted that she was unable to conclude that the critical word "northeast" had been altered in any way. The sum of her testimony was merely that pages of the warrant may have been reshuffled and that staple holes indicated a change in the order or retyping of some pages. Her testimony, however interesting and professional so far as it went, was insufficient to overcome the positive testimony of McKenna, which there is absolutely no reason to disbelieve.

2. Motion as to legality of arrest.

Politi also claims that (Point I of his Memorandum) his arrest on August 29, 1972 "was illegal". We state below the facts of this arrest in connection with Peters' motion. It appears unnecessary to decide whether Politi's arrest was legal because he does not allege that any evidence or statement was taken from him or seek to suppress any evidence.

Michael Roman

1. Motion as to particularity of description of 77 Broadway.

Roman moves to suppress evidence secured in a search of the premises at 77 Broadway, Park Ridge, New Jersey, on the grounds that the description in the authorizing warrant of June 1, 1972, was defective because it described the premises as a "one family residential building" whereas, in fact, as stipulated between Roman and the Government, the premises was a two family dwelling registered as such at the Building Inspector's Office of the Borough of Park Ridge, New Jersey.

The two apartments at 77 Broadway were unconnected by any entrance and had completely separate entrances, utilities, telephones, heating systems and mail boxes. The upper and lower apartments were occupied by different people, although the telephone and utilities of the lower apartment were listed in the name of the upper tenant at the time the lower tenant moved in.

The Government has submitted 26 photographs and Roman has submitted 6 photographs of the premises which are admitted as exhibits in the evidentiary

hearing. I have carefully studied the photographs and conclude that without question the building to all outward appearances is a one family house. There is only one front doorway. In the photographs submitted, there appears to be only one mail box, although I recognize the stipulation to the contrary. The only window in the second floor which can be viewed from the front of the premises is a single dormer window, surely not suggesting that a separate apartment exists on the second floor. The neighboring houses also appear to be one family houses. No utility meters are in view on the outside of the building which could have given a clue as to the number of occupants. It is true that photographs of the side, and particularly the back of the house, show windows at second floor level and, at the back, a separate entrance proceeding from the ground level by stairs to the second floor. However, these indicia are not inconsistent with single family occupancy and on examination suggest no more than that as a matter of convenience a second floor exit had been built at the back of the house for the use of the family.

Roman argues that the warrant failed to describe the premises with the particularity required by the Fourth Amendment. We disagree and find the description

adequate under United States v. Santore, 290 F. 2d 51 (2d Cir. 1960). There, the court held that a description as a one family house of a building which was in fact a two family house was constitutionally sufficient where "to all outward appearances" the premises were "a one-family house with a front door and side door". It is true that the Santore house had always been registered with the local authorities as a one family dwelling, whereas, here the building was listed in public records as a two family house. We do not read Santore as turning on that point.

It is stipulated that 77 Broadway was registered with the Public Inspector's Office of the Borough of Park Ridge, New Jersey, as a two family dwelling. Roman contends that the Police should have consulted the records to determine this fact. We disagree. In the first place, we believe as we have indicated above, that the Police had the right to rely on the fact that to all outward appearances the house was a single family residence. Furthermore, we concur with the Government's argument that it was reasonable in the circumstances for the agents not to search the records since they were aware that Roman had previously been convicted of bribing a State Policeman, and had reason to believe that if they consulted the records their

action might cause a leak fatal to the investigation.

We find, as the Santore court did that:

> "the issued warrant described the premises to be searched with that 'practical accuracy' we have held to be necessary. United States v. Fitzmaurice, 2 Cir., 1930, 45 F.2d 133. The description in the warrant was in accordance with the outward appearance of the structure, cf. Carney v. United States, 6 Cir., 1935, 79 F.2d 821, and in view of the concealment [by Orlando] of the interior alteration [made by him] it would be absurd to say that the Government was on notice as to it."

2. Sufficiency of affidavits underlying search warrants.

Roman seeks to suppress evidence seized in warranted searches of the premises 77 Broadway, Park Ridge, New Jersey, on June 1, 1972, and 15 Eastview Avenue, Yonkers, New York, on August 28, 1972. The claim is that the underlying affidavits in support of the respective search warrants, both made by Robert C. Reutter, were insufficient to establish probable cause either to arrest him on either occasion or search either of the premises. Although there is some question whether Roman has standing to attack the search of the premises of 15 Eastview Avenue, since he neither owned nor occupied the premises, and is not accused of possessing material found on the premises, we treat

his claim fully nevertheless since the claim was also raised by Cuzzo who was the owner of the premises.

We have carefully reviewed the affidavits themselves and the applicable case law including the leading decisions, Spinelli v. United States, 393 U.S. 410, (1969); Aguilar v. Texas, 378 U.S. 108 (1964); Jones v. United States, 362 U.S. 357 (1960) and the cases cited by all counsel and find that both affidavits clearly establish requisite probable cause to arrest Michael Roman on the dates in question and to search 77 Broadway and 15 Eastview respectively. No purpose would be served in reviewing the affidavits in detail as to each point.

Roman also contends, relying on Sgro v. United States, 287 U.S. 206 (1932) that even if the affidavits supporting the warrants contained probable cause for the arrest and searches, the probable cause had become stale by the time the warrants were issued. We disagree. In United States v. Fitzmaurice, 45 F. 2d 133 (2d Cir. 1930) Judge Learned Hand upheld a search conducted 19 days after the last observation of the offense. Here the affidavits establish that the FBI observed Roman travel to a deserted telephone booth on May 24, 1972 only 8 days before the warrant; saw him leaving 77 Broadway, leaving the telephone booth and traveling

to 77 Broadway the same day. As to the search warrant of August 28, 1972, relating to the arrest of Roman and the search of 15 Eastview, we find (as to Roman) that the affidavit contained information showing that, only 3 days before, Roman had been seen traveling to the telephone booth on Saw Mill River Parkway to pick up envelopes that Cuzzo had left for him; and as to the search of 15 Eastview, that the affidavit established that after Cuzzo and Bowman met on August 22nd, Cuzzo proceeded to 15 Eastview.

Roman further complains that both affidavits were insufficient because based on double hearsay. This claim is disposed of by the observation of the court in United States v. Fiorella, 2nd Cir., Slip Opinion 10/13/ 72, Docket Nos. 72-1459, 72-1460, that:

> "However, the mere fact that an affidavit contains 'double hearsay' does not automatically make it insufficient to supply probable cause. United States v. Smith, 462 F. 2d 456 (8th Cir. 1972); United States v. Becker, 334 F. Supp. 546, 549-50 (S.D.N.Y. 1971), aff'd, 461 F. 2d 230 (2d Cir. 1972); United States v. Carney, 328 F. Supp. 948 (D. Del. 1971); United States ex rel. Crawley v. Rundle, 312 F. Supp. 15 (E.D. Pa. 1969). Rather, the question is whether the information given by the informant, taken in the light of the totality of circumstances, can reasonably be said to be reliable. United States v. Smith, supra, 334 F. Supp. at 550 and n. 14."

As in Fiorella, so here there were facts before the Magistrate sufficient to insure the reliability of the information contained in both warrants even though they included double hearsay as well.

3. Constitutionality of statutory presumption.

Roman next argues (in connection with the June affidavit) that the presumption contained in 18 U.S.C. §1955(c) that:

> "If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established."

is unconstitutional.

The Government contends that we need not reach the constitutional issue. Its argument is as follows:

1. The definition of the proscribed "illegal gambling business" contained in §1955(b)(1) includes at (iii) that the business "has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of $2,000 in any single day."

2. It was reasonable for the Magistrate to

conclude from reading the June affidavit that there was probable cause to believe that the business had been continuously in operation for a period in excess of 30 days.

3. It was, therefore, unnecessary for the Magistrate to make an alternative finding of probable cause as to the $2,000 gross revenue and

4. Therefore, in the circumstances the presumption relating to the $2,000 gross revenue contained in §1955(c) is surplusage.

We agree with the Government's rationale. We have carefully studied the June affidavit and find it more than adequate to establish probable cause that the business had been in continuous operation for more than 30 days. Under the circumstances the Magistrate was not required to make a finding that the business had also grossed more than $2,000 a day. Consequently, the provisions of §1955(c) did not become operative.

Accordingly, it is unnecessary for us to determine the interesting question raised by Roman as to whether provisions of §1955(c) which specify that the $2,000 gross "shall be deemed to have been established" unconstitutionally deprives a defendant of the right to a specific judgment on the question by an independent Magistrate. The decision per curiam of the Sixth

Circuit in United States v. Palmer, 465 F. 2d 697 (6th Cir. 1972) and Judge Gurfein's decision in United States v. Politi, 334 F. Supp. 1318, (S.D.N.Y. 1971), which hold that what those courts describe as the statutory "presumption" is rational and rebuttable tend heavily in the direction of overruling Roman's contention here but do not appear to rule specifically on the narrower question presented.

Alphonse Cuzzo

Cuzzo's sole motion relates to the adequacy of the description of the premises contained in the search warrant for 15 Eastview Avenue. The warrant describes the premises as "15 Eastview Avenue, Yonkers, New York, a two-story white asbestos shingle residential dwelling". Cuzzo argues that the description is constitutionally deficient in not stating with particularity the apartment within 15 Eastview Avenue to have been searched. The issue thus raised is the same raised by Roman as to whether the agents knew or should have known that the premises contained more than one living unit. We hold that the affidavit did describe the premises with sufficient particularity and that the agents neither knew nor should have known that the building contained more than one living unit.

As in Roman's case, Cuzzo and the Government have each submitted photographs of the premises which are accepted as exhibits in the evidentiary hearing. We have examined the photographs carefully and find that to all outward appearances the building was a one family dwelling. United States v. Santore, supra. The sole indication that the building might not be a one family dwelling is the fact that from the street in front of the house, it might have been possible to notice that at the single door permitting entrance to the house there were two tin mail boxes, side by side; and on the frame of the door there were two buttons, presumably to ring bells within the house. We do not consider these indicia sufficient to have alerted the agents (assuming they could notice them as they surveilled the premises in an automobile) to the fact that the building might contain more than one living unit. In the first place, one of the mail boxes contains no identifying name and appears to be long since out of use. One might conclude from looking at the photograph of the mail boxes that for some reason the second, newer mail box had been placed next to an old abandoned one. As to the two bell buttons on the frame of the front door, the very fact that there was only a single front door

would reasonably have diverted a viewer from the belief that the bells themselves indicated more than one living unit within the building.

We recognize that in United States v. Esters, 336 F. Supp. 214 (E.D. Mich. 1972), the court concluded on facts very close to those here that the warrant was defective for lack of particularity. There are, however, significant differences between the facts of Esters and of this case. First, in Esters, the premises were "constructed as a two family dwelling". Although no photographs of the Esters building are contained in the opinion, it is reasonable to assume that the outward appearance of the building would have suggested to a viewer that it was being used for the purposes for which it was built, that is as a two family house. Second, on the exterior of the Esters building, there were not only two mail boxes side by side but they were built into the brick of the building, making it quite clear that they were intended to be used for separate parties. The mail boxes in our case appear to be fixtures attached in a random or transient manner to the outside wall.

Third, the Esters house included on its exterior a speaking tube which the court characterized as a

"device commonly used in multi-occupancy dwellings". Fourth, the Esters door bell buttons were separate and easily visible and attached to each mail box. The door bell buttons here, while separate in the literal sense, were so close to each other as to suggest that they related to the same premises and, in any event, were not so clearly visible and were not part of other paraphernalia like the Esters mail boxes which, being imbedded in the walls were clearly indicia of two family use. Finally, two electric utility meters were attached to the side of the Esters building, an item of evidence which nearly conclusively suggests two family occupancy of the house. No such fixtures existed at 15 Eastview.

Like Roman, Cuzzo argues that in any event the officers procuring the warrant would have been able to determine from searching local records that 15 Eastview Avenue was occupied as a two family dwelling. There are several answers to this contention. First, we see no reason why when from all outward appearances a building is a single family dwelling, located in an area of single family residences, procuring agents are obligated to search every possible record to negate the presumption that the building is what it appears to be. Second, in any event, in this instance, the

agents did check the "Criss-Cross Directory" which lists individuals by street address, published by Coles (Tr. of evidentiary hearing 388-389) and found only one residence listed at the address. Finally, we agree with the agents that they had a right on the basis of their own or their agents' past experiences, to consider that an extensive search of public records in a relatively small community might cause leaks of information which would alert the occupants of the house to be searched.

Robert Peters

Peters moves to suppress all items taken from his 1971 Ford Thunderbird on August 29, 1972, at 8:00 P.M. by Agent Lans Emory. Emory testified that on that evening he arrested Peters in Yonkers, New York, and incidental to the arrest took several items from Peters' person. Peters concedes that Emory had seen that Peters had just taken a white envelope bearing policy notations from a telephone booth near the location of the arrest. (Peters' Memorandum, Page 1). Peters argues, nevertheless, that there was no probable cause to search the automobile, since his arrest occurred outside the car.

We hold that there was probable cause to search the car. The testimony established that Peters drove

up to the phone booth to retrieve envelopes that Gerald Politi had left there. He retrieved the envelopes from the booth and returned to the car with the envelopes.

Since the record also establishes that Agent Emory had, prior to Peters' going to the booth, opened the envelopes left there and found what in his experience he believed to be policy slips, seen Peters take them to his car apparently ready to drive off, Emory had probable cause to believe that the car was being used to transport the policy slips. Furthermore, the evidence established that Anthony Politi, who Emory saw sitting in the car, had previously been arrested on gambling charges in the Bobbin Inn raid and that Emory knew this. Moreover, as Emory approached the car, he saw Michael Roman, also in the car, furtively slide something under the seat, a further reason to believe that contraband was in the car. We find that on the totality of this evidence it was reasonable for Emory to conclude that the car was being used to "make the rounds", that is to transport gambling material illegally. Carroll v. United States, 207 U.S. 132 (1925) and Chambers v. Maroney, 399 U.S. 42 (1969).

Arthur Frangello

1. Double jeopardy.

Frangello moves to dismiss the indictment on the ground that the prosecution here will subject him to double jeopardy.

Frangello was convicted in New York State for promoting gambling and possession of gambling records on November 23, 1971. He claims that since the same evidence was used to prosecute him in New York State as will be used in this case, and since according to him the "dual sovereignty" concept is no longer the law, double jeopardy attaches.

We need not consider whether Frangello's claim that the evidence which would be used against him in this trial would be the same as the New York evidence, since we disagree with him that a state conviction followed by a federal conviction based on the same facts constitutes double jeopardy. Bartkus v. Illinois, 359 U.S. 121 (1959) specifically held that successive state and federal prosecutions based on the same transaction do not constitute double jeopardy. Frangello argues that Waller v. Florida, 397 U.S. 387 (1970) and Murphy v. Waterfront Commission, 378 U.S. 52 (1964), have "severly undermined" Bartkus. Waller did reject the extension of the Bartkus rule to successive municipal and state prosecutions on the basis that municipalities

were part of the state sovereignty and that the dual sovereignty concept, therefore, could not apply. However, in Robinson v. Neil, U.S. Supreme Court, January 16, 1973, it was stated: "But the court's opinion in Waller makes clear that the analogy between state and municipal prosecutions, and federal and state prosecutions permitted in Bartkus v. Illinois, 359 U.S. 121 (1959) has never been sanctioned by this court and was not analytically sound."

2. Staleness of probable cause.

Frangello also moves to suppress the fruits of the November 23, 1971 search warrant on the ground that although for the purposes of this branch of the motion there may have been probable cause for its issuance, the probable cause had become stale because 11 days had passed since any observation of him by state law enforcement officials. He also argues that six months had elapsed since he had 1st been seen entering 354 Washington Street, Newburgh, New York, an address to which the warrant was directed. On the authority of United States v. Fitzmaurice, supra, we deny the motion. The affidavit of Officer Tripodo dated November 23, 1971, supporting the warrant, showed that as late as November 12th, he had seen Patricia Hyatt hand

Frangello a small package in the rear of 354 Washington Street and later that day meet with Philip Politi, known to Tripoldo as a gambler; and that Tripodo knew that on November 22, 1971, Patricia Hyatt had been arrested in Rockland County carrying a package that contained policy slips.

Philip Politi

Politi moves to suppress evidence taken from the Bobbin Country Club on the grounds that the search warrant does not adequately desdribe the items to be searched or the place to be searched. The motion is denied. Politi also moves to suppress evidence taken from 199 South Street, Newburgh, on the grounds that the affidavit underlying the search warrant does not comply with the requirements of §690.10, subdivision 3 and §690.35, subdivision 2(b) of the Criminal Procedure Law of New York. The motion is denied.

Miscellaneous Motions

Since the Government has admitted that tapes of conversations of some defendants will be offered in evidence, defense counsel urge that a taint hearing be held in advance of trial. On the authority of United States v. Tortorello, Docket #72-1957, 2d Cir. April 5, 1973 (Footnote 17) and United States v. Birrell, Docket

#72-1470, 2d Cir., December 4, 1972, the motion is denied. The proper procedure is to hold such a hearing after trial, if necessary.

Several defendants have moved either on the grounds of misjoinder or otherwise for severance. The motions are denied except in the case of Michael Camporeale, whose motion is granted. Camporeale is charged solely with perjury and not with conspiracy with the co-defendants or committing the substantive offenses of which they are charged. We believe that his joint trial with the other defendants, when the major portion of the evidence in such a trial would relate to the conspiracy and substantive gambling charges, would unfairly prejudice Camporeale.

Several defendants have moved to dismiss the indictment on the grounds that §1955 is unconstitutional. Their motions are denied. United States v. Becker, 461 F. 2d 230 (2d Cir. 1972) and United States v. Politi, supra, at 1322.

We have considered all the other motions of the defendants and find them unmeritorious. The motions of defendants are denied.

It is so ordered.

Dated: New York, New York
June 8th, 1973.

Marvin E. Frankel
U.S.D.J.

TRANSCRIPT OF PROCEEDINGS BEFORE LASKER, D.J.
ON APRIL 2,3,4, 1973 (SUPPRESSION HEARING)

UNITED STATES OF AMERICA

vs. 73 Cr. 56

ANTHONY POLITI, et al

Before:

HON. MORRIS LASKER,
District Judge.

New York, April 2,3,4, 1973

SUPPRESSION HEARING

opd

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

United States of America, :

vs. :

Anthony Politi, Gerald Politi, Philip Politi, Michael Roman, Robert Peters, Michael Camporeale, Alphonse Cuzzo, Arthur Frangello, Leonard Harrison, Lawrence Johnson, Louis Visconti, Eddie Washington and Harry Weis, : 73 Cr. 56

Defendants. :

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Before

HON. MORRIS LASKER,

District Judge,
Suppression Hearing,
Non-Jury

New York, New York
April 2, 1973 - 11:35 a.m.

APPEARANCES

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APPEARANCES (Continued):

PAT M. WALL, ESQ.,
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ROBERT P. LEIGHTON, ESQ.,
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EDWARD S. PANZER, ESQ.,
Attorney for Defendant R. Peters

GEORGE J. BELLATONI, ESQ.,
Attorney for Defendant Cuzzo

THE COURT: Will all counsel who are participating in this hearing please give the reporter your name and firm name.

Anybody else participating in the hearing?

Have we all the appearances now?

MR. LEIGHTON: Leighton.

THE COURT: I was halfway through my apologies for keeping you waiting. I have a jury case which I just concluded charging the jury, and I am sorry you had to stand out there.

However, it is only fair to let you know the jury is deliberating and, of course, it may interrupt our proceedings, I hope it won't. I thought the best way to proceed, since my calendar has been such to prevent you from studying your papers, although my law clerk has, would be for each of those who has made a motion and expects to proceed separately today, if there are going to be joint presentations, I would like to know about it, to let me know what contentions they have established by their motions, and what evidence will be presented to me today so that I can understand the issues that you decide.

I have no particular order. I don't remember which men--I will just read from the appearance sheet I have in front of me. Mr. Anolik.

MR. ANOLIK: Yes, your Honor, I think perhaps we

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ought to take it Mr. Fahringer, Mr. Lanna and Mr. Anolik in that order, your Honor. I am participating, your Honor.

THE COURT: Mr. Fahringer.

Mr. Friedman.

MR. FRIEDMAN: Yes, before we proceed today, I note that all the defendants are not present, and I understand that this is a proceeding where all of the defendants do have a right to be present.

THE COURT: I believe that at our last pretrial meeting, the date of which escapes me, but it was about two or three weeks ago, that all counsel were present or that all defendants were represented by one counsel or another, and it was indicated that any motions which were to be made would be returnable before this or at this time, and that a hearing would be held as to any evidentiary matters raised by those motions at this time.

Anybody who isn't present today is not present because he wished not to be.

MR. ANOLIK: That is correct.

MR. PANZER: Why don't I inject this problem before Mr. Fahringer gets started. I have to be before Judge Galliardi at 12:30. I indicated that to your Honor. I want your Honor's permission to leave at 12:30. Mr. Leighton will stay on my behalf, and I will return when I dispose of

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that.

THE COURT: You have that.

MR. WALL: Your Honor, I have an additional problem. My initial motions were such as not to require the taking of any testimony. It was simply an argument that on the law there were insufficient grounds for the issuance of the warrants of arrest.

Last week sometime, I received in the mail additional papers from Mr. Friedman. They may or may not require testimony.

I have been unable to contact Mr. Frangello, who is the only one involved in these new papers, and it may be that--I have a feeling, your Honor, if I am correct in what the issues are, that this hearing is likely to take place on more than one day.

THE COURT: I have reserved all of the remainder of today, and all of tomorrow for what we thought we would need, and I hope, Mr. Wall, that you can decide this question before the end of tomorrow and, if necessary, call whatever witnesses you need during tomorrow.

Thank you.

MR. FAHRINGER: It might be well for me to say at the outset, your Honor, that on behalf of Michael Roman, and I would suspect the other defendants join in this, we

have urged in connection with all of the searches, and I address myself to this subject, your Honor, because it is relevant to the question that was posed concerning our interest in various searches that under authorities, since the government has charged a conspiracy here and claim in their indictment that all of these men were acting as partners to one another and in the same enterprise, that they enjoy a right of standing in the search of another man's home particularly, your Honor, if it is claimed that that search related directly to the operation of the business of policy.

So to that extent, your Honor, I think it is incumbent upon me to make the record clear that in behalf of Michael Roman, and I suspect the other defendants, too, it is our claim here that we have an interest in all the searches and the right to move to suppress it. I am particularly interested in three that I am prepared to discuss with you now.

There are three searches, your Honor, and it might be well for me to identify them by the description of the search warrant. The Bobin County Country Club, which took place on January 26, 1971; the search of 77 Broadway in Park Ridge, New Jersey, which took place on June 13, 1972, and, your Honor, of course, the search of Michael Roman when he was arrested and a search conducted of him on August 29, 1972.

Now, your Honor, our contentions are essentially these, if I might just outline them for you briefly.

In connection with the searches that took place with search warrants, our position is, your Honor, that the probable cause is insufficient as a matter of law. I might just indicate to your Honor--if I may look at my notes for a moment, and if you will just bear with me--by way of example, your Honor, the one search warrant that runs--I should say, the affidavits which contain allegations of alleged probable cause that I think run as kind of a common denominator throughout these search warrants, I think is defective in the sense that in the instance, to give you one example of 77 Broadway, the search of Michael Roman's person and the premises there, there was absolutely no information supplied by the informants connecting any policy operation at those premises.

As a matter of fact, if you were to examine that affidavit right now, I think I can say without fear of contradiction that the only reference there in the affidavit of any kind was that Michael Roman went to those premises. He was observed going in there on, I think, four or five occasions.

The information from the informants related to other places and other people and so to that extent, and

that happens to be a search that I am very much concerned with individually for Mr. Roman. In the instance of that search, your Honor, I submit to you that the informant information was inadequate and the surveillances that followed.

THE COURT: That issue is to be decided on the affidavit alone?

MR. FAHRINGER: That could be, I feel, without question.

Now, your Honor, there is another problem in connection with 77 Broadway, which I think is peculiar to all the search warrants, and I can tell you about it in just a few moments. That is a two-family house, your Honor. There is no dispute about that, and we could prove that and I would hope that this is something we could enter into by stipulation.

THE COURT: Do you dispute that it is a two-family house, Mr. Friedman, or do you not know?

MR. FRIEDMAN: Your Honor, the apartment where Mr. Roman was was that of a Jean Bujese. The nature of the building is such that it appears to be a one-family dwelling house. Miss Bujese's parents live upstairs, but it is controlled by Miss Bujese.

THE COURT: There may be slight variarions in your attitude toward it, and we will wait to hear what the witnesses have to say.

MR. FAHRINGER: I think perhaps some of this, and I would be glad maybe over the lunch hour, to approach Mr. Friedman on this, I would like to say for the record that my investigation shows that it is so registered with the housing people in that community as a two-family house. There are separate utilities, separate telephones, that the city directory lists it as two-family.

I might say this, your Honor, that up until just two weeks before the raid took place, there was a complete stranger tenant in the house as compared to Mrs. Bujese. In other words, there was someone that had no relationship.

THE COURT: You are making that a critical element, the relationship of the family and what the influence of that is on this?

MR. FAHRINGER: That is right. To that extent, and critical, it seems to me, for your determination would be that with these facts of record, which could be easily investigated and learned by the law enforcement agency involved, they represented to the magistrate that it was a single family dwelling.

I don't mean to argue the law now, but let me just say this much more. As I have analyzed the cases, there may be something to be said where they don't go to the magistrate or they don't designate it as a single family

dwelling, but they only use a street number and it turns out to be a two-family dwelling, because in that situation they may well claim with a little more success, well, we didn't know, we had assumed right away. When they represent it as a single family dwelling, it seems to me that adds some force to our complaints here.

Your Honor, that pretty much, your Honor, takes care of the 77 Broadway.

Now, I don't want to say any more at this juncture than this: That I think, your Honor, we may have a serious question in all of the search warrants that I have had an opportunity to examine, the affidavits in support of it, as to informant disclosure. I can point to, your Honor, at the appropriate time, a number of instances when the entire probable cause came from the informant.

Now, there were claims made that, well, there was some surveillance but I would hope I could convince you at the appropriate time that that surveillance under the cases, such as Spinlelli and Beck versus Ohio, was really meaningless and was as consistent with innocence as with guilt.

It seems to me under Second Circuit decision, and I refer specifically to United States versus Robinson, where the Court said if the corroboration doesn't corroborate criminal conduct, but simply some people getting together,

then, of course, disclosure can be required under the circumstances of these cases.

There is one other problem, your Honor, that I think you ought to know about early, and that is this: That I have a serious misgiving in examining these affidavits as to whether the information that was supplied by the informant was supplied to the affiant. The affiant uses this language, and I might explain to your Honor that I have had some experience with this in other cases in this District where they came in and said, no, we concede that the informant gave the information to another F.B.I. agent who, in turn, gave it to the man who made the affidavit, a double hearsay situation. We have authorities that have treated that rather harshly in the federal courts because the problem is, if I can just give you the common sense of it, the problem is that really no one risks the sanctions of perjury. The reason that these affidavits have to be made before a judicial officer and under oath is that in the event they say something that isn't true, that might result in the intrusion of the privacy of a person's home, then he suffers the sanction of perjury and to that extent it is holding that that possible penalty will persuade him and encourage him to be completely forthright and frank with a judicial officer who has to make a difficult judgment as to whether

or not a search warrant will issue.

In this case, we may need some testimony on this, but I would say on the face of the affidavit alone, when the affiant says that information has come to the attention of the Federal Bureau of Investigation and doesn't say it has come to my attention, but perhaps some other agent who has transmitted it to him, there may be a very serious problem, and I cite to your Honor a case, United States versus Fiorello, just decided by the Second Circuit within the last three months, where in a similar situation, the Second Circuit went out of its way to condemn this practice and indicated to United States Attorneys that it would be far better practice under the Fourth Amendment to have the affiant, who is going before the magistrate, have direct knowledge with the informant. We don't really know if the man who is making the affidavit can attest to this man's reliability, the previous arrest, the previous things that tend to encourage a judge.

THE COURT: I understand your concern that that is the case. But that is what we have to find out.

MR. FAHRINGER: I think other than that, to the best of my ability, talks generally about all of the search warrants. I think, your Honor, that Mr. Lanna will tell you in just a moment there is a very serious factual dispute

concerning the search of the Bobin Country Club that I have a direct interest in, but other than that, I would hope that a lot of this could either be agreed upon by stipulation or perhaps by one or two witnesses.

THE COURT: Mr. Lanna.

MR. LANNA: I take it your Honor is directly concerned this morning with the search and seizure aspects in the hearings?

THE COURT: I am concerned with whatever issues there are, and these are the only ones that I know of that will require witnesses.

MR. LANNA: Very well. If I may just limit myself to the Bobin situation.

THE COURT: Let me say this: If we have enough time in the time that I have put aside for this today and tomorrow for you, at the conclusion of whatever testimony we have to hear, to make any argument you want on any issues that are pending before me, I would welcome it. I don't normally ask for it, but as long as you are here and this is a fairly large and complicated case, that would be helpful. The first thing is to get into the record whatever you need in order that I can decide the questions that you put before me.

MR. LANNA: Yes, sir.

As to the features which Mr. Fahringer spoke as they relate to Mr. Politi, of course, I will join in his statements in connection with them.

As to Bobin, I think there is very little to discuss. It is a situation where we are alleging, and we have from the very inception of that arrest, and I have lived with this for the last two years now, and that is under the State prosecution as well, which is still pending, that that particular warrant and the affidavit was altered following the raid by the authorities and I don't see very much, unless your Honor wishes me to discuss it--

THE COURT: No.

MR. LANNA: I think it is something that will be developed by the testimony. I think that the initial papers have been served upon your Honor with the initial affidavits.

THE COURT: All right.

MR. ANOLIK: Your Honor, I am not going to be very long because Mr. Fahringer and Mr. Lanna have interpreted my sentiments to a large extent. My client, who is, I think, directly concerned here, is Mr. Philip Politi. I think Mr. Lanna used the generic name, Politi. There are three Politis in the case. I think he meant to say Anthony Politi.

I think it would be appropriate to put on the record at this juncture, your Honor, that this is a task force

prosecution, which means State and Federal personnel have participated. It is our view that the issues here necessarily encompass issues which would be brought up in State Court suppression hearings, as well, your Honor. That is the reason why we are hopeful that we will be able to interrogate State officials because, frankly, the issues here would be dispositive--

THE COURT: I don't--of course, I have enough to keep track of the Federal Court, but it seems to me the question of who testifies here doesn't depend upon their name, rank or serial number, but whether they are a witness, and if their testimony is of use to you in another proceeding, much more power to you.

MR. ANOLIK: Another argument was made in another case which perhaps your Honor is not familiar with because it was in a trial court where there was an objection made to calling a state witness on the grounds that the F.B.I. could give hearsay testimony of that state witness's testimony. I don't think we will have that problem here because I believe the witnesses are all here, but I just wanted the record to be clear that we view this as a case which is intertwined completely with the State prosecution.

THE COURT: I understand.

Anybody else wish to add anything before we proceed?

MR. BELLANTONI: I have one motion pending before the Court, and that is a motion to suppress evidence, and I believe your Honor can decide it on the papers. I have a situation where the premises searched are a legal two-family residence, and the search warrant doesn't recite a two-family nor a one-family residence. It merely recites a two-story house.

I believe that you can dispose of this on the papers.

THE COURT: Very good.

MR. PANZER: I represent Mr. Peters, and basically my position is as follows. There were certain items seized from Mr. Peters on August 29. With respect to that, there was an arrest, and arrest warrants were filed. I believe your Honor can decide the issues with respect to that, based on the arrest warrant.

I think there is an additional problem, which is involved in this case, which I would like to urge to your Honor. The Bobin Inn incident goes back to January 26, 1971, and that was pursuant to a search warrant, and that is what is going to be the basis of the hearing. There will be a big problem if the motion is granted with respect to Bobin Inn because I believe the government obtained many leads with respect to informants, and which might even lead up to the arrest of Mr. Peters, based on that initial search which

goes back to January 26, 1971.

Mr. Peters, of course, was arrested in August of 1972. However, if your Honor finds that that search warrant is invalid, I think we will have a problem of the fruits of the illegal search and we will have problems with and the Wong Sun case.

THE COURT: You are unwise to point that out ahead of time. It gives me a good reason to decide it against you.

MR. PANZER: I want to prepare you on that. If your Honor does decide in my favor, it may necessitate other hearings.

THE COURT: At least, there is a good reason to look at it early.

MR. LEIGHTON: Your Honor, I represent Michael Camporeale, who is indicted only in the third count for the crime of perjury. My argument is similar to that of Mr. Panzer's, that if your Honor does see that the search warrants are illegal on their face, I can contest there is possibility of leads and links and fruits of the crime from this evidence obtaining information that was asked Mr. Camporeale in the grand jury.

MR. WALL: Your Honor, included in the papers that I got last week from Mr. Friedman was a search warrant

directed to Mr. Frangello. However, the papers did not indicate whether there was any return and whether there was anything seized. Obviously, if nothing was seized, I am not going to have to bother you with anything further.

Mr. Friedman nods, apparently something was seized.

THE COURT: Something was seized?

MR. FRIEDMAN: Yes, your Honor.

MR. WALL: He intends to offer evidence, I take it?

MR. FRIEDMAN: Yes, your Honor.

MR. WALL: I will have to get in touch with Mr. Frangello.

THE COURT: Gentlemen, you are all invited to stay here, and I am not quite sure whether counsel are saying that matters that they have before me can be decided on the papers alone. If that is true, such a person is not obligated to stay here. It is entirely up to you.

As to those of you who are participating in the hearing, have you reached any consensus as to how you wish to proceed?

MR. FRIEDMAN: Your Honor, the government would proceed first with the searches without search warrants, and then would leave it up to the defense to proceed as to searches with search warrants.

THE COURT: That is sensible. At least, it will get us going.

MR. ANOLIK: Your Honor, may I just ask one housekeeping item. I made a tentative appointment at one, assuming that would be a normal lunch hour.

THE COURT: It will be.

MR. ANOLIK: Fine, thank you.

THE COURT: I will have lunch hour from about a quarter of one until two.

MR. ANOLIK: Fine.

THE COURT: Mr. Friedman, will you tell me whenever there is a new series of witnesses and starting with the first one with regard to which search your witness is being called so I am prepared for it.

MR. FRIEDMAN: Yes. Firstly, your Honor, I have handed to each of the defense attorneys certain material, including returns on search warrants and some 3500 material for this hearing, and I would like to hand to your clerk and have it marked as an exhibit for this hearing, a copy of the material that I have turned over to defense attorneys.

THE COURT: All right.

MR. PANZER: I see that there are a number of witnesses--

THE COURT: Just one moment, Mr. Panzer. Do you

want to have the whole folder marked as one exhibit?

MR. FRIEDMAN: Yes, sir, I would just have it marked as one exhibit.

XXX (Government's Exhibits 1 marked for identification.)

THE COURT: Mr. Panzer raises the question of witnesses being in the room. Is that the case?

MR. FRIEDMAN: Yes, your Honor.

THE COURT: Can you tell me how many potential witnesses there are? We have a number of small rooms on the side hear where people can wait without having to stand in the hall, but I think it is better for possible witnesses not to be present

MR. ANOLIK: Other than the defendants, I don't know of any witnesses that we have.

MR. FRIEDMAN: Yes, there are several witnesses we have in the courtroom.

MR. ANOLIK: Of course.

MR. FRIEDMAN: Yes.

THE COURT: Would you have them wait, except for the one testifying, in the witness room.

All right, Mr. Friedman.

MR. FRIEDMAN: Your Honor, the first search that I will address myself to is the search in Yonkers, New York

on 8/29/72 next to a telephone booth and I would ask that Mr. Lance Emory be called to the stand, your Honor.

THE COURT: What did you say the date was?

MR. FRIEDMAN: 8/29/72.

A L L E N L A N C E E M O R Y, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

MR. FRIEDMAN: Your Honor, with leave of the Court, I will sit down, if that is all right with you.

THE COURT: That is all right.

MR. FRIEDMAN: Would you prefer I stand?

THE COURT: I don't have any strong feelings on it, at least in a hearing, so long as you are as polite as you are.

MR. FRIEDMAN: Thank you.

Q What is your occupation, please?

A I am a Special Agent of the Federal Bureau of Investigation.

Q How long have you had that occupation?

A A little over three years, sir.

Q Where are you presently assigned?

A New York office of the R.B.I.

Q Sir, did you have occasion to be on duty on 8/29/72?

A Yes, I was on duty that day.

Q Where were you stationed?

A I was in Yonkers, New York, the location of Tompkins Avenue and the Saw Mill River Parkway.

Q Now, where were you physically located, actually?

A At Tompkins Avenue and Saw Mill River Parkway, there is a Gulf Station located on that corner.

THE COURT: Gulf Gasoline Station?

A That is correct, sir.

In that Gulf Gasoline Station, there are phone booths at one end of the parking lot of that station. I was located approximately fifteen to twenty feet away from that phone booth hidden in some brush and wooded area.

MR. FRIEDMAN: I ask that this be marked for identification.

XXX (Government's Exhibit 2 marked for identification.)

Q Sir, I hand you Government's Exhibit 2 marked for identification, and I would ask prior to being stationed next to that telephone booth that you just testified about, had you read Government's Exhibit No. 2 marked for identification?

A I did read the affidavit, sir.

Q You read that prior to being stationed at the location that you indicated?

A Yes, I did.

Q Prior to being stationed at that location, did you know that there was an arrest warrant out for Mr. Michael Roman?

A Yes, I was aware of that fact.

MR. FRIEDMAN: Your Honor, I move that Government Exhibit No. 2 marked for identification be admitted into evidence.

THE COURT: Identify it for the record, Mr. Friedman.

MR. FRIEDMAN: Yes, your Honor.

Exhibit No. 2 is an affidavit executed on 8/28/72 by Mr. Robert C.Reutter, Special Agent of the Federal Bureau of Investigation, and it relates to an arrest warrant for Mr. Michael Roman, Mr. Hope Roberts. It relates also to search warrants for three locations, your Honor, 22 North Perry Street--

THE COURT: That is sufficient identification.

MR. FAHRINGER: Your Honor, I have glanced through the exhibit very quickly, but I would oppose it and I would like you to understand my grounds. Ordinarily, I wouldn't.

This is a situation where it is an affidavit of a

Robert Reutter. I presume it is offered to show there was probable cause for this man to make an arrest. I can't conceive of any other relevance, so for that purpose, it seems to me we are foreclosed on cross-examining on the affidavit for the arrest of these men. To that extent, I think--

THE COURT: On that basis, we would go back forever. Either Mr. Reutter is here or he isn't. He will be made available to you if he wants.

I think the best policy for me to follow in these hearings is to get all the facts before me, and you can make any argument you want with regard to the validity of the situation thereafter.

If that is the objection, I will receive the item in evidence, without prejudice to any argument on your part or calling Reutter.

MR. LANNA: If your Honor please, just for housekeeping, can an objection by one counsel be deemed an objection by others who are involved?

THE COURT: I beg you to proceed in that fashion and also insofar as the examination of witnesses is concerned, particularly since we are without a jury, if you are satisfied with what one of your fellow counsel has done, please don't repeat it.

XXX (Government's Exhibit 2 received in evidence.)

Q Sir, prior to stationing yourself at that telephone booth, had you on other occasions been present at that telephone booth?

A Yes, I had. On other occasions, I had observed one Michael Roman on three occasions pick up or enter the phone booth during the evening hours within the recent weeks of August 29.

Q Do you know the dates that you were there?

A The dates were August 23 and 24 and other agents on the 25th.

THE COURT: Are those the dates on which you saw Roman, you say, at that spot?

THE WITNESS: I think that is correct, sir.

THE COURT: In other words, a few days before the day we are talking about?

THE WITNESS: Yes, sir.

Q What procedure had been followed on those prior days, sir?

A The procedure concerning the defendant?

Q What procedure was followed on those other dates that you just testified to when you saw Michael Roman? Were any observations made of policy work on those dates?

A On the previous dates the individual, Mr. Cuzzo, one of the defendants, was observed entering that phone booth during the evening hours, the early evening, somewhere in the neighborhood of 8:30 P.M.--

THE COURT: You earlier said you had seen Roman?

THE WITNESS: Yes, sir.

THE COURT: You saw Cuzzo go in the booth, too?

THE WITNESS: Yes, sir. Mr. Cuzzo entered the booth approximately 8:30 to 8:45, somewhere within that vicinity during the evening of the dates I have given you.

Also, a while later, anywhere from thirty-five to--thirty-five minutes to an hour and a half, Mr. Roman would also enter that same booth.

Upon Mr. Cuzzo's entry into that booth, he would place a number of envelopes beneath the shelf in the telephone booth.

Upon Mr. Roman's entry, he would retrieve those envelopes from the place of hiding that Mr. Cuzzo had placed them.

Q To your knowledge, prior to 8/29/72, had anyone looked in those envelopes that had been left in the telephone booth other than Mr. Cuzzo or Mr. Roman?

A Yes, sir.

Q Who had?

A I had looked into the envelopes. So had Special Agent Carl Amaditz.

Q What did you observe?

A Gambling records, sir.

Q Policy records?

A Yes, sir.

MR. ANOLIK: I will object to this, your Honor, on the grounds that there is no basis established for his right to look into these envelopes, your Honor. They were not abandoned property.

THE COURT: I will hear the evidence.

Q Now, sir, on 8/29/72, what did you do after you stationed yourself there? Did you check the telephone booth before you stationed yourself next to it?

A Yes, sir.

Q What did you find in the telephone booth before you stationed yourself next to it on 8/29/72?

A I found no extraneous material, no gambling records or slips or envelopes.

Q Then you went next to the telephone booth, is that right?

A That is correct, sir.

Q What, if anything, did you observe after you stationed yourself there?

A I stationed myself in such a position as to view the phone booth thoroughly.

THE COURT: What time was this now?

THE WITNESS: I stationed myself at the phone booth right at eight o'clock, sir. After stationing myself there, I observed one person known to me as Gerald Politi prior to the telephone booth exit his car, enter the telephone booth and place a single envelope beneath the shelf of that telephone booth. He exited the telephone booth without making a telephone call. Got in his vehicle and drove in a northward direction on the Saw Mill River Parkway. This was approximately 8:30.

Q What did you observe after that, sir?

A After that time, I notified another special agent, Special Agent Growney. I notified Special Agent Growney that I had seen Gerald Politi at that telephone booth, that he had entered and placed the envelope beneath the shelf and that he was to take appropriate action. Whereupon, Mr. Growney entered the telephone booth. He took the envelope from beneath the shelf, looked at it, replaced it beneath the shelf and then he exited the phone booth.

THE COURT: You saw him do those things?

THE WITNESS: Yes, sir.

THE COURT: I take it you were conferring with him

by radio?

THE WITNESS: That is correct, sir.

Mr. Growney then contacted Special Agent Reutter, who was in contact with the United States Attorney, who authorized by telephone that the person who picked up that envelope was to be arrested.

Q Prior to contacting Mr. Reutter, did Special Agent Growney notify anyone as to what the contents of the envelope were?

A Yes, he notified Special Agent Reutter by radio as to what was in the envelope.

Q Did you hear that communication?

A Yes, I did.

Q Were you on the same frequency of the radio?

A Yes, sir.

Q What did Mr. Growney say were the contents of the envelope?

A Mr. Growney said the envelope itself had the letter B on it, and it had gambling records, policy tapes.

MR. FAHRINGER: Your Honor, that really calls for a conclusion.

THE COURT: It doesn't call for a conclusion that that was what he said.

MR. FAHRINGER: On the merits, it is a conclusion.

That is what I am urging. No matter who said it, it is a conclusion.

THE COURT: We may have to get farther down the line, but I want to get the chain of identity.

Q What did you observe after that?

A After the entry and exit of Mr. Growney, correct?

Q Yes, sir, and after Mr. Growney's communication, did Mr. Reutter come back and authorize the arrest?

A Yes, he notified everyone on the radio that we had authorization to arrest the person picking up that envelope.

Approximately thirty minutes later from that point, a car drove up to the phone booth. Mr. Robert Peters exited that car. He entered the phone booth, retrieved the envelope, placed it in his shirt pocket, front shirt pocket and turned around and exited the phone booth without making a call, returned to his car. Upon arriving at the car, he was opening the door and preparing to get in. I appeared from my hidden location, identified myself, ordered he and two other occupants, which were now visible to me, out of the car. Those two occupants were Mr. Michael Roman and Mr. Anthony Politi.

I instructed them to put their hands on top of the car in as much as I did not have any other agents in the immediate vicinity at that time, and then I instructed them

that they were under arrest and instructed them of the charge.

Q Did you search the car?

A I searched the car after we seized the car as a forfeiture under the statute.

Q You searched it?

A Yes, I did.

Q What did you find in it?

A In the car, I found three articles or three collective articles. In the back seat, rear left back seat, I found a roll of money with a piece of brown paper around it and a slip with numerical notations bound into the money by rubber bands.

Q Who had been sitting in that back seat?

A Mr. Michael Roman.

Q Did you see Mr. Roman take any action with respect to that package that you found?

A Yes, sir, as I approached the car and as I identified myself, Mr. Roman took that package and placed it in the vicinity of the floorboard beneath him. It was either in his hand, on his lap or in his pocket, but I did see it go from his hand to the floor.

Q What was in that package?

A There was a quantity of money, approximately nine hundred thirty dollars.

Q Did you find anything else in the automobile?

A Yes, sir.

In the front floorboard, passenger side of that automobile, where Mr. Politi was sitting--

Q Mr. Anthony Politi?

A Yes, sir, I also found a quantity of money bound by rubber bands, and it was in the amount of, I think, one thousand twenty-one dollars.

Q Was there anything else with it?

A Yes, sir, there was a slip of paper with numerical notations as there was with the earlier money.

Q Did you recognize what those numerical notations referred to?

A Like gambling policy totals.

Q Did you find anything else in the car?

A Yes, sir. Over the visor on the driver's side of the vehicle.

Q Where Mr. Robert Peters was sitting?

A Yes, sir, he was the driver of that automobile. Over the visor was a white envelope with the initials "Y.U.S." on them--

THE COURT: "Y"?

THE WITNESS: "Y.U.S." and the date, if I am not mistaken of 8/26 and in that particular envelope were also

gambling records, policy totals.

Q Now, sir, do you know Mr. Arthur Grangello?

A Yes, sir, I do.

MR. FRIEDMAN: Your Honor, at this time, I would go into a search on 6/14/72, Mr. Arthur Frangello.

THE COURT: All right.

Q Did you have occasion to meet Mr. Frangello on 6/14/72?

A Yes, sir.

Q You were on duty, is that correct?

A Yes, sir, in Newburgh, New York.

Q What, if anything, did you do on that date, sir?

A On 6/14/72, I was in Newburgh. I attended a meeting in the early morning or, excuse me, in late morning, early afternoon, whereby we had a debriefing, we being agents and state officials, of present arrest warrants that were outstanding, one of which was for Mr. Arthur Frangello.

That afternoon, myself and Special Agent Growney--

THE COURT: Excuse me. Would you wait just a moment.

THE WITNESS: Certainly.

(Pause.)

THE COURT: I understand that on June 14, 1972 you were in Newburgh, New York, is that correct?

A Correct, sir.

THE COURT: Do you want to go on from there.

MR. FRIEDMAN: Yes.

Q You were in Newburgh, New York, and what did you do on that date?

A I was in Newburgh, New York for the special purpose of executing an arrest warrant for Mr. Arthur Frangello.

Q Did you see him?

A Yes, sir, I did. Mr.Frangello was seen on Washington Street in Newburgh near the Twilight Bar whereupon he was approached by Special Agent Growney and myself. We identified ourselves from a distance of about thirty yards.

Mr. Frangello then turned from us and walked to a trash can in an alleyway where Agent Growney saw Mr. Frangello toss a couple of slips of paper, as a matter of fact, two slips of paper.

Q You didn't personally see that?

A No, I did not, sir.

MR. WALL: I take it this is being taken subject to connection?

THE COURT: Yes, it is. I take it Mr. Growney will testify?

MR. FRIEDMAN: Yes.

A Mr. Frangello then turned and spoke to us, acknow-

ledging our presence. We told him he was under arrest, and advised him of the charge, Mr. Growney advised him of his rights.

Mr. Frangello then was detained, was handcuffed, placed in the vehicle and taken to the Newburgh Barracks of the State Police.

MR. FRIEDMAN: I have before me an affidavit in support of the arrest warrant for Arthur Frangello, Lonny Johnson and others, dated 6/13/72, and executed by Bob C. Reutter. At this time, I would ask that it be put into the court record as Exhibit Number three as of this date, your Honor.

MR. FAHRINGER: Objected to on the same grounds that I previously urged, your Honor.

THE COURT: I will accept the document subject to those objections and consider the validity of those objections after the hearing has concluded.

XXX (Government's Exhibit 3 received in evidence.)

MR. WALL: Same objection, your Honor.

THE COURT: All right, Mr. Wall.

THE COURT: Are any of you gentlemen ordering a transcript of this hearing?

MR. FAHRINGER: I would think we would want them.

THE COURT: Make one available to me. It will save me a lot of nitpicking detail.

MR. FRIEDMAN: No further questions of Mr. Emory, your Honor.

THE COURT: Gentlemen, in what order do you want to proceed?

CROSS EXAMINATION

BY MR. FAHRINGER:

Q Mr. Emory, I take it that your connection with this case before the events on August 29 was primarily surveillance, is that correct?

A For the most part, sir.

Q You had been stationed at various places and watched certain people, is that correct?

A That could be correct, yes, sir.

Q You are not the agent in charge of the investigation?

A No, I am not, sir.

Q I take it during the course of this investigation you would from time to time have other assignments, wouldn't you?

A Primarily with the same case. Very few assignments other than this one case.

Q But you were available for other assignments if one came up?

A Yes, sir.

Q Now, I am interested in this automobile that came up and you indicated that Mr. Roman was in, and Mr. Tony Politi and one other person. Could you describe that car for us?

A I think so, sir. It was a Ford Thunderbird. I think a dark red color, and if I am not mistaken, a black vinyl top.

Q Had you ever seen that automobile before, sir?

A Yes, I had.

Q I take it you had seen it driven to these locations before, had you not, these spots?

A Not to this specific location before, sir.

Q But to other places?

A Yes, sir.

Q These other places that it had been driven to, isn't it true were places you suspected were policy pickups?

A In the instance of this particular car, yes, sir.

Q So, now, you had the car, you had a description of the car and you probably had the license number, didn't you?

A I think the license number had been recorded earlier.

Q There isn't any question in terms of your procedures—have you ever gotten a search warrant for an automobile before?

A Me, myself, specifically?

Q Yes.

A Not for an automobile, no, sir.

Q You know it can be done, of course?

A Certainly.

Q In this instance, you had no search warrant for the automobile?

A That is correct.

Q Now, you say this search was conducted of the car under forfeiture, is that the word you used?

A Yes, sir, under the forfeiture provisions of the statute as an instrumentality.

Q Do you know whether a warrant of forfeiture was ever issued by a district judge?

A No, I would not, sir.

Q Are you familiar with the rather detailed provisions of forfeiture that is contained in the federal law, that you give notice to the owner of the automobile, that the automobile is going to be forfeited, so many days pass and they have rights to do certain things, you are familiar with that?

A I am familiar with that.

MR. FRIEDMAN: This is beyond the scope of the knowledge of the agent. It is an attorney's question rather than a question to the agent.

THE COURT: He may or may not know it. I don't know what weight it carries, but I allowed the government to present evidence broadly, and I would like to hear the defendants.

Q You are familiar with those procedures?

A I am somewhat familiar with them.

Q Isn't it true that none of those procedures were ever invoked in this case?

A As far as I know, there were no forfeiture proceedings invoked.

Q Nothing was ever done in connection with forfeiting this car?

A Not prior to the actual confiscation of the vehicle on 8/29.

Q Nothing was done after the confiscation of the vehicle in terms of forfeiting the car?

A I am really not sure I can answer that, sir.

Q You don't know one way or the other?

A I don't.

Q Isn't it true that the subject of forfeiture came up and was discussed in connection with this hearing in connection with this search of the car, isn't that true?

A The subject of forfeiture came up long before the cars were actually seized, this car was actually seized.

THE COURT: It was seized on the 29th of August, 1972?

A Right. Our instructions were by virtue of the United States Attorney, Assistant United States Attorney, was to seize cars that were involved in the operation as an instrumentality.

Q Were you under instructions in connection with seizing them to search them also?

A Specific instructions, I am not sure.

Q You are not sure about that?

A No, sir.

Q So, you can't tell us of any U. S. Attorney who authorized you to seize an automobile and told you you had the right to search it also, did they?

A Me personally, I can't say, sir.

Q Let's get back to the situation now of the automobile. So the record is clear here now, the automobile was seized and, as far as you know, in connection with your part in this case, no forfeiture proceedings were ever instituted after that that you know of?

A To my knowledge.

Q You indicated that Mr. Roman was in the car. Where was he seated, if I may ask you?

A Mr. Roman was in the rear seat, right behind the

driver.

Q The automobile was parked--you were standing, as I understand it, behind some brush near the Gulf Station, is that correct?

A I was actually standing on the phone booth, on the side away from the Gulf Station, in a little wooded patch area.

Q Concealed?

A Concealed, right.

Q About how far would you be away from the automobile?

A From there, I would say a distance of no more than twenty-five feet.

Q Twenty-five feet. Would you tell us again what time of day it was?

A It was during the evening hours, approximately 9:30.

Q About 9:30 at night?

THE COURT: It was dark?

A Yes, it was.

Q It was dark. Did you remain in your position there concealed behind the shrubbery while you made these observations?

MR. FRIEDMAN: Your Honor, I object to the question on the basis of the fact that it is a vague question as to

when he observed Mr. Roman, if that is the question, and he has not testified that that took place specifically at the time he was in the wooded area.

THE COURT: It is easy enough to tighten that up. Ask him when he was watching Mr. Roman.

MR. FAHRINGER: Thank you, your Honor.

Q I take it what you saw was the automobile pull up from your position of concealment.

A Correct.

Q And at that point, you were twenty-five feet away from the automobile, isn't that so?

A From the automobile.

Q Then you made certain observations in that position of concealment, isn't that so?

A That is correct.

Q Are those the observations that you told us about here in terms of what the occupants of the automobile did?

A Yes, sir.

Q At some point, I take it when the arrest was effectuated, you bolted out of the bushes, is that right?

A That is right.

Q You captured the men and did what had to be done in terms of taking them into custody?

A Correct.

A Correct.

Q Up until that time, though, until you actually rushed out, all of your observations were made from the bushes, is that right?

A Correct.

Q I wanted to ask you this: You don't proclaim to be an expert on policy, do you? You never testified as a policy expert, have you?

A No, I have not.

Q You never held yourself out as a policy expert, have you?

A Not as an expertise.

Q You make no claim here to this Court or to anyone else that you are in a position to testify as an expert as to what is policy, what figures and numerical computations are relevant to what types of games of policy that are played and all the other complications of that enterprise, are you?

A No, sir.

THE COURT: I don't blame you for wanting him to get to answer that, but I would like to hear positively what his experience has been.

MR. FAHRINGER: May I ask, your Honor?

THE COURT: Yes.

Q You have never testified as an expert in policy?

A No, I have not.

Q Have you ever had the experience of teaching policy to anyone?

A No, sir.

Q Have you--

THE COURT: Let me put it this way.

What has your experience been in relation to policy that makes you say, as you did, that these slips were policy and gambling slips?

THE WITNESS: I have worked policy for--policy operations for a little over a year and a half. During that time, I have seen policy records that have been confiscated through other cases that--

THE COURT: About how many cases would you say?

THE WITNESS: Oh, an estimate, I would say ten cases. Policy records, I have taken a look at the book-keeping setup for a policy operation, the type of paper that is used normally for the transmission of policy information. It is convenient in size and adaptable to that particular operation.

I have taken a look, and I have also had someone explain, I say someone, someone that worked policy a bit longer, explain the system of policy to me.

MR. FAHRINGER: Are you finished, your Honor?

Q May I ask you this: You have never actually, under your own authority, made a policy arrest, that is to say, on your judgment, before, have you?

A On my authority without an arrest warrant?

Q Right.

A No, sir, I haven't.

Q So that in terms of your experience, you had never had the occasion, prior to this time, August 29, to make an arrest of a person based upon looking at papers and saying this is policy and placing the man under arrest under your own authority, had you?

A No, I had not.

Q As a matter of fact, as I recall your testimony, you were in radio communication with headquarters, the U.S. Attorney's office, and they were the ones that indicated go ahead and make the arrest, isn't that so?

A Yes, sir.

Q Now, there isn't any question, I asked this just for the record, the U. S. Attorney had never seen those policy or whatever there was in the phone booth there, had he?

A Of course not.

CROSS EXAMINATION

BY MR. ANOLIK:

Q Mr. Emory, can you tell me what distance the car was from the telephone booth?

THE COURT: At what point, Mr. Anolik?

Q At the point that the envelope was picked up?

A I'd say ten feet.

Q Ten feet?

A Ten to twelve feet.

THE COURT: When Mr. Peters got out of the car?

MR. ANOLIK: Yes.

A Ten feet.

Q The envelope that was placed in the phone booth, as you say you saw it placed, did you at any time think that had been an abandoned piece of property?

A No, sir, I did not.

Q Were you aware of the fact or was it your belief that it was designated for some human being to pick up?

A Certainly.

Q And that human being certainly was not you, isn't that so?

A That is correct.

Q Did you have any court authorization to look into that envelope?

A No, sir, I did not.

Q Did you have instructions from anyone saying you

could open the envelope and look into its contents?

A No, sir.

Q Could you tell me whether or not this was something you did on your own?

A Are we speaking of the 29th?

Q The time of this arrest.

A I did not look into the envelope.

Q Whoever did, who looked into the envelope at that time?

A Special Agent Growney.

Q Do you know if he had any authority, of your own knowledge, do you know whether he did?

A Authority vested from the United States Attorney?

Q That is right.

A No, sir.

Q Do you know--

THE COURT: You mean, no, you don't know, or no, you know he didn't?

A No, I don't know.

Q Did you ever see any search warrant for the purpose of looking through that envelope?

A No, sir, I did not see a search warrant.

THE COURT: I think it would save time to ask Growney about that.

MR. ANOLIK: I am trying to establish that the envelope could have been concealed from a United States Magistrate or other judicial official and perhaps at that point an order could have been obtained, but the fact is it apparently was done before anybody picked it up, and that is all I am trying to establish just to short-cut the situation.

Q In other words, as far as you know, nobody had anyone's authority or consent to look into the contents of that envelope, so far as you know, isn't that so?

A From what I heard, no, I do not know.

Q You went to the car, and you say you saw an envelope over a visor, is that correct?

A That is correct, sir.

Q Had you ever seen that envelope before?

A No, I had not.

Q Did you know it was the same envelope that had been taken from the phone booth?

A No, I didn't know it was the same envelope.

Q But you examined the contents, is that correct?

A I examined it, but the description of the envelope did not meet the description that was given by radio.

Q It did not meet the description?

A No, sir.

Q So, therefore, you examined an envelope other than

that described over the radio?

A That is correct.

Q Did you ever find the envelope that was allegedly described over the radio?

A It was found, sir.

Q But not by you?

A No.

Q Did you have any authority to examine the envelope--you had no authority to examine any envelopes, isn't that true?

THE COURT: No specific authority any way.

A No specific authority, no, sir.

Q Had you seen anybody commit a crime in your presence?

THE COURT: I think that is a question for me to decide, isn't it?

MR. ANOLIK: It is, your Honor.

THE COURT: You can ask him if he thought he had.

MR. ANOLIK: Yes.

Q Did you think you had seen anybody commit a crime?

A From what I saw of the pick-up, delivery and pick-up of envelopes into that phone booth, and also the delivery or the placement of the single envelope and the pick-up, yes, I thought I had seen the commission of a crime.

Q What crime did you think you had seen?

A Illegal gambling business, sir.

Q Had you known the individual who picked up this envelope?

A Mr. Peters?

Q Yes.

A Yes, I did.

Q Had you had him under your surveillance before?

A Yes, sir.

Q Did you ask for his permission to look into the car?

A No, sir, I did not.

Q Did you obtain consent from anybody to look in the car?

A The car?

Q Yes.

A No, no, sir.

Q Did you see or did you believe that you saw Mr. Roman or Mr. Anthony Politi commit any crime?

A On this date of 8/29?

Q Yes.

A No, sir.

Q Were they arrested, however, for the same reason that Mr. Peters was arrested?

A Yes, sir.

MR. ANOLIK: I have no further questions.

CROSS EXAMINATION

BY MR. LANNA:

Q Agent Emory, when was it that this vehicle was searched, as you told us, under the inventory statute?

A The vehicle was searched after the prisoners, the defendants, were secured.

Q That was on the same evening?

A Yes, sir, that is correct.

Q But the arrest had been effected prior to that, had it not?

A Prior to the searching of the car, yes, sir.

Q That is as to the person I represent, Anthony Politi?

A Yes, sir.

Q You have already told us you didn't feel that he had committed a crime in your presence, isn't that so?

A Mr. Politi, I think I am playing with semantics here, Mr. Politi did not, as I could see, commit a crime.

Q In your presence, then and there at that time?

A I think we need some clarification, at least, I need some clarification.

THE COURT: Mr. Lanna is trying to get you to say that Mr. Politi never committed a crime in his life one way

or another, he just wants to know what you think you saw. Is that right, Mr. Lanna?

MR. LANNA: Yes, sir.

A From my vantage point, I did not see Mr. Politi commit a crime.

Q Despite that, you arrested him?

A He was under arrest, yes, sir.

Q Isn't that because when you saw Mr. Anthony Politi and knowing of his background, it was your assumption he should be arrested?

A No, sir, it wasn't that arbitrary.

Q If I was sitting in the car, would you have arrested me?

A No, sir.

MR. FRIEDMAN: I object.

Q Isn't it a fact, Agent, that you were armed with search warrants or your brother officers were that evening?

A For what, sir?

Q To arrest people.

A Arrest warrants?

Q Arrest warrants, excuse me.

A Yes.

Q There were affidavits attached to those warrants, were there not?

A Yes, sir.

Q These affidavits indicated a period of surveillance prior to August 29 of 1972?

A Correct.

Q Isn't it further a fact that within those affidavits nowhere was there to be found the name of an Anthony Politi?

A I did not read all of the affidavits, sir, so I can't answer that question.

Q Do you have any recollection of seeing it in the affidavits that you read?

THE COURT: I will ask you to check that out.

A I would have to refresh my memory to answer the question.

Q I think you described the vehicle which you saw on that evening, I think you said it was a Thunderbird, is that correct?

A That is correct.

Q What color was that vehicle?

A If my memory serves me correctly, it was a burgundy color, dark red color.

Q If I may just clarify something: You say that you were hidden in the bushes. Were you crouched or were you standing or would you describe the posture you were in?

A Varied postures depending--mostly in the prone

position.

Q Prone, meaning lying down, is that correct?

A Correct.

Q When the automobile came, it was approximately how far away from you?

A The automobile from my vantage point was approximately twenty-five feet.

Q You were looking up into the automobile, is that correct?

A Correct.

Q You finally righted yourself entirely, I take it, when you were ready to move in and make the arrest of Mr. Peters, is that correct?

A Correct.

Q You dashed out from your position of surveillance?

A Correct.

Q And you grabbed Mr. Peters as he was about to reenter the car, isn't that so?

A I identified myself as I was coming from that position.

Q Was it then that you first were able to see who was in the car?

A Yes, it was.

Q Otherwise, it was pretty dark in that area, is it

not?

A From that particular vantage point, there is light in the area, but from my particular vantage point with my concentration on the phone booth, I didn't see the individuals clearly until I did get out in front of the phone booth.

Q As you ordered the individuals who occupied the car out of it, you saw nothing on Mr. Politi at that time, did you?

A Nothing on him?

Q Yes.

A In his hands or person?

Q Yes.

A Not that I noticed.

Q He complied with your request, did he not?

A Yes, he did.

Q Where was it now that you found the one thousand some-odd dollars with a slip of paper containing numerical notations?

A That was found in the front floorboard, passenger side of the automobile.

THE COURT: Under the place where Mr. Politi had been sitting, according to your testimony.

A The footwell where your feet would normally be positioned in, in such a seating.

Q Is that contained within any of the reports which you filed? That is, as to the exact location?

A No, I don't think it is.

Q Would it be fair for me to say that although you mentioned it, you merely recited it as being found within the car being operated and owned by Mr. Peters?

A I think the way the document records it, if I am not mistaken, is it gives in common form the articles found in the vehicle without any description of where they were found.

Q Did you testify before the grand jury in connection with this case?

A No, sir, I did not.

Q Have you any personal notes in connection with this?

A Personal notes?

Q Yes. Did you take any?

A Presently maintained?

Q Yes.

A I had personal notes at the time, at the time of the search of the car.

Q Is it your testimony that you don't have them now?

A No, sir, I don't.

Q Would you be kind enough to tell the Court what has happened to them?

A These are specifically for the 29th, correct?

Q Yes.

A Let me clarify the situation on notes. I had a surveillance log which recorded the time elements involved, but as far as notes specifically to the car, I don't have any. I did take things down, like we require the license, of course, the mileage--

Q Let me ask you this: Did you make any note anywhere or any report which indicated where you found the items on the floorboard,on the front seat or on the rear portion of this car on August 29 of 1972?

A No, sir, I don't think so.

Q There is no recordation of that anywhere and never has been, is that correct?

A It was not recorded in our interview or our 302.

Q Did you give a receipt to anyone as to property which was taken?

A A receipt for the contents of the car, I am not sure. I don't think so. I think there were receipts given for the actual property taken off the persons of Mr. Anthony Politi, Mr. Roman and Mr. Peters.

THE COURT: I am going to intervene now even though I had hoped you could conclude because I have to get back to this jury at two o'clock.

Gentlemen, I think I will be tied up with the jury at that time for about fifteen minutes, so why don't you plan to be here about 2:15.

(Adjourned for lunch.)

AFTERNOON SESSION

2:35 p.m.

A L L E N L A N C E E M O R Y, resumed.

THE COURT: Mr. Lanna.

MR. LANNA: If your Honor please, I see Mr. Reutter sitting here beside Mr. Friedman. It is my recollection Mr. Reutter played a very important role in this entire investigation and undoubtedly he is going to be a witness for one side or another, and I would ask that he, too, be excluded from the courtroom.

MR. FRIEDMAN: Your Honor, I would ask that your Honor exercise his discretion and not excuse Mr. Reutter. Mr. Reutter is the case agent in this matter and is of invaluable help to me. I believe that your Honor, if he has any doubts as to the credibility of Mr. Reutter, can take into account that Mr. Reutter has been present listening to all the testimony and can weigh it in that light.

THE COURT: He has heard the substance of Mr. Emory's testimony anyway. Is it possible for you to call-- do you intend to call Mr. Reutter?

MR. FRIEDMAN: I don't, your Honor.

THE COURT: I will just have to take into account and you will have to cross examine on the basis of the fact that Reutter has been here and heard with has gone on.

MR. LANNA: Very well.

May I continue, sir?

THE COURT: Yes, Mr. Lanna.

CROSS EXAMINATION CONTINUED

BY MR. LANNA:

Q Agent Emory, is it your testimony, sir, that it was you who first approached the vehicle and effected the arrest on Mr. Peters and Messrs. Anthony Politi and Roman?

A Yes, sir.

Q This was before Mr. Peters got back in the car?

A As he was getting into the car.

Q And brother agents came upon the scene after you did, you were the initial agent?

A Momentarily, yes.

Q Was it you, sir, who personally searched the defendant Anthony Politi after you effected the arrest on him?

A I would have to refresh my memory on that, sir.

Q Would you do so? Do you have something?

THE COURT: Have you got a report or something by which the witness can refresh his recollection?

MR. FRIEDMAN: Your Honor, nothing was physically seized from Mr. Politi's person and he made no statements.

MR. LANNA: That wasn't my question.

THE COURT: I know it wasn't your question, although

if nothing was seized and no statements were made that there is anything further to go into. If there is, you are free to go into them.

Q Do you recall whether or not you searched Mr. Politi, Anthony Politi?

A Frankly, I don't. I either searched--I was in the presence and watched Mr. Politi being searched or else I searched him physically, he or Mr. Roman. Mr. Bobby Peters was searched by someone else.

Q What time was it that you say you first positioned yourself in this position of surveillance?

A I would say around eight o'clock.

Q So you were there approximately how long before Mr. Peters got to that phone booth?

A An hour and a half.

Q What time was it that the envelope you have described for us was left at that phone booth?

A Approximately 8:35, 8:40, something like that.

Q It was approximately an hour between the time of that envelope being left and Mr. Peters arriving, is that correct?

A Correct.

Q You tell us also that you were in a position where you could see the envelope being left there?

A Yes, sir.

Q Where was the envelope deposited?

A The envelope was placed beneath the shelf. As a phone booth is constructed, in the corner where the phone apparatus, the dialing system is located, there is a shelf directly beneath that of triangular shape. The envelope was left beneath there.

A piece of paper could be lodged by wedging it up in there.

Q It is your testimony that this could be seen from your vantage point?

A Yes, it could.

Q Was it a glass-type phone booth?

A Yes, sir.

Q How far did the glass exist from the top down?

A The glass, I would say, down to at least the thigh or knee area.

Q After the envelope was deposited there by the individual whom you tell us left it there, and prior to Mr. Peters arriving approximately one hour later, how many people did you observe go into that telephone booth?

A That particular booth, I didn't observe anyone.

Q In other words, it is your testimony there was no one else within that one-hour span?

A No, sir.

MR. LANNA: I have no further questions.

THE COURT: All right.

Mr. Wall, do you have anything?

MR. WALL: Yes, your Honor.

CROSS EXAMINATION

BY MR. WALL:

Q You have testified that you participated with brother agents in the arrest of Mr. Frangello on June 14, 1972. Is that correct?

A Correct.

Q Can you tell me whether or not at the time of the arrest in addition to a warrant of arrest you had any personal information about Mr. Frangello?

A Could I have an example of personal information?

Q What I want to know is, did you base that arrest solely upon the warrant of arrest that had issued by the Federal Magistrate?

A Not solely.

Q Prior to the time of the arrest, in your judgment as an experienced law enforcement agent, had you sufficient information either obtained personally or from interviews with your brother agents, to justify your arresting Mr. Frangello on that day?

MR. FRIEDMAN: I object, your Honor. Is the question with knowledge that the warrant was issued, or is the question independent of knowledge of the fact that a warrant was issued.

THE COURT: Sustained.

Q Independent of the existence of the warrant.

THE COURT: Do you have sufficient information?

A Did I have enough personal knowledge to arrest him without the existence of the warrant?

Q That is my question.

A My personal knowledge, no.

Q I will give you that same question again, and ask you whether or not your personal knowledge, together with what you had learned from brother agents, did you have sufficient information at that time on which to have arrested Mr. Frangello without a warrant?

A I think that there was enough recorded information to have arrested Mr. Frangello. That is just my opinion.

Q But, in any event, you were acting pursuant to the terms of the warrant when the arrest was made?

A That is correct.

Q Would you give us the names of the agents who accompanied you at the time of the arrest?

A Special Agent Growney, Michael B.--

THE COURT: You are asking who was with him?

MR. WALL, Yes, sir.

A He was the other agent with me.

Q There were two of you?

A Right.

THE COURT: Growney and who?

THE WITNESS: Myself, sir.

THE COURT: Just you and Growney?

THE WITNESS: Right.

Q Did each of you have a copy of the warrant of arrest?

A No, no, sir, I am sure each of us did not have a copy of the warrant.

Q Did either of you have a copy of the warrant?

A I would have to check, sir, I am not sure.

Q Do you have here in Court the wherewithall to make that check?

THE COURT: Maybe he can while another witness is testifying and let us know.

MR. WALL: Would you do that, please, see whether or not you have documents sufficient to refresh your recollection on that point.

THE WITNESS: Sure.

Q When you first saw Mr. Frangello, were you together

with Agent Growney?

A Yes, I was.

Q Had you arrived at the vicinity of the arrest in an automobile?

A Yes, I had.

Q Were you still in that automobile when you first saw Mr. Frangello?

A Yes, sir.

Q Where was Mr. Frangello located when you saw him?

A Mr. Frangello was on the Washington Street in the vicinity of the Twilight Tavern.

Q Had you ever had occasion to see Mr. Frangello or to talk with him before? Confine that just to talk with him before.

A No, I had never spoken to Mr. Frangello.

Q Do you know whether or not he had ever had any personal contact with Agent Growney?

A I don't think he did.

Q I take it he had no personal contact with you?

A No.

Q When you saw Mr. Frangello and with knowledge that a warrant had been issued for his arrest, what did you do next?

A Mr. Frangello was seen on the street, as I said, in

front of the Twilight Bar and myself and Agent Growney approached him by vehicle, got out, We were, I guess, a distance of thirty yards, identified ourselves--

Q Excuse me a second. Were you a distance of thirty yards when you got out of your vehicle?

A Yes.

Q You identified yourselves from how far away?

A I would say the same thirty yards at first. The first reply. We stated our identities.

Q How did you do that?

A At least twice.

Q How did you do that?

A We spoke in loud tones, we yelled down the street.

Q You said, we are F.B.I. agents, hold it?

A F.B.I., you are under arrest, if my memory serves me correct.

Q That was at a distance of thirty yards?

A Yes.

Q Was there anyone with Mr. Frangello at the time you made this announcement to him?

A No, there was not.

Q Prior to the time that you made the announcement, had you seen him have any contact with any other person?

A Yes, we did.

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Q What was the nature of the contact he had with other people?

A He had earlier been in the company of a lady, I'd say middle aged, or I would say forty years of age--

Q This is not middle-aged.

A I'm sorry. My mistake.

He had been in the company of a lady--

THE COURT: I will have to look up the definition.

A They walked east--no, excuse me, west on Washington Street away from the Twilight Tavern. He had opened the door for her to enter a car, her vehicle, I think, and she had entered. He had talked to her for just a brief moment, and then walked back in the direction of the Twilight Bar.

Q That was the only person you saw him have any contact with him?

A That is correct.

Q What you saw him do was have a conversation with her while he escorted her to her car?

A That is just what it happened to be.

Q Had she driven away by the time you made your announcement of the arrest?

A She had started to drive away.

Q Was any effort made to apprehend that lady?

A Not by us. State police, two State policemen were

in the immediate area with us.

Q Are you able to tell us now the identity of that lady?

A No, I am not.

Q Do you know whether or not she was also stopped?

A Yes, she was detained momentarily by the State Police.

Q Was she placed under arrest?

A No, she was not.

Q Do you know whether her vehicle was searched?

A I don't know, sir.

Q After you made the announcement that you were agents of the F.B.I. and that you intended to place Mr. Frangello under arrest, what happened next?

A From the distance of thirty yards?

Q Yes, sir.

A Mr. Frangello in a hurried manner was right beside an alleyway and he just walked to the alleyway and, according to Mr. Growney, Agent Growney, who had a better vantage point than I did, he went to the alleyway, lifted the garbage can lid of the two that were there and deposited some paper.

Q This was after he had heard you identify yourselves and state your purpose?

A Yes, it was.

Q Who was it that made the announcement, both of you or just one of you?

A If I am not mistaken, I think both of us made the announcement.

Q Where were you with respect to Agent Growney when you both made this announcement to Mr. Frangello?

A I was behind Agent Growney.

Q How far behind him?

A I don't know. I guess half the distance to Art, Mr. Frangello.

THE COURT: You were thirty yards from him and Mr. Growney was fifteen?

A Mr. Growney was considerably closer because we had traffic to contend with. We had to get out of a car and I had a car that came by me, and I couldn't open the door in the traffic.

Q You were driving the car?

A No, sir.

Q Do you know whether or not Agent Growney ever went to that trash can and recovered any of its contents?

A Yes, I do. He did go to that trash can and retrieve the paper.

Q Have you seen any of the contents? Have you seen what Agent Growney recovered?

A Yes, I did.

Q What was it that he recovered?

A Two slips of paper with numeral, numerical type notations.

Q You don't recall--how many numerical notations were on the piece of paper?

A I couldn't say without looking at the exact evidence.

Q Did you see Mr. Frangello--withdrawn.

You have testified that it is Agent Growney who told you what he saw Mr. Frangello do in the alley?

A Right.

Q Did you see Mr. Frangello go to that alley after you had announced that you were F.B.I. Agents and that he was under arrest?

A Yes, I did.

Q What was the distance between the alley and the place where he was when you first made that announcement?

A I would say fifteen feet.

Q Approximately the distance between you and I at this moment?

A Something like that. He seemed not to acknowledge, if I might add, he seemed not to acknowledge our first vocal attempt to gain his attention.

Q Were you across the street from him when you made that announcement?

A We were on the same sidewalk he was on.

Q Was he looking in your direction?

A He was initially.

Q When you saw him looking in your direction, you signalled him and made your announcement?

A Yes, sir.

Q And it was then, after you announced that he was under arrest, that he went to the alley?

A Yes, sir.

MR. WALL: If your Honor will bear with me just a moment.

THE COURT: Yes.

(Pause.)

MR. WALL: I have no further questions.

THE COURT: All right, anything else?

MR. PANZER: Yes. May I remain seated?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. PANZER:

Q You arrested Mr. Peters on August 29, 1972, is that right?

A Yes, sir.

Q Is it true that the arrest warrant with respect to this arrest was not signed until August 30 of 1972, the day after?

A That is possibly correct, sir. We had verbal authorization.

Q I have a copy of the affidavit. Would you like to see it to refresh your recollection?

A I don't think I have ever read that affidavit, sir.

THE COURT: Would it refresh your recollection if you saw it?

A It may be of help.

MR. FRIEDMAN: I would stipulate that a complaint was filled out as to the two people for who arrest warrants were not outstanding for the day after they were arrested.

THE COURT: Do you stipulate the answer to Mr. Panzer's question is yes?

MR. PANZER: My question was the arrest warrant was obtained and signed on August 30, 1972?

MR. FRIEDMAN: Yes, I would stipulate.

Q So that as of the night of August 29, 1972, there was no outstanding arrest warrant for Mr. Peters, is that true?

A That is correct.

Q You did not have a search warrant for Mr. Peters

that night either, did you?

A No, I did not.

Q You didn't have a search warrant for his car on August 29, 1972?

A No, sir.

Q On August 29, 1972, in Yonkers, you were on a stake out, isn't that true?

A Surveillance, if that is what you are saying.

Q How long had you been conducting this particular investigation as of August 29, 1972?

A Seven to eight months.

Q Was this in conjunction with state authorities?

A In part.

Q Now, isn't it also true that this particular investigation initiated with the State authorities back in 1971?

A No, sir.

Q Are you familiar with the seizure at the Bobin Inn in Rockland County?

A Somewhat.

Q Was that done solely by State authorities?

A I think it was done with State authorities and maybe County officials also.

Q But at that point you, nor any of your fellow officers were involved?

A To my knowledge, none of us were involved.

Q That seizure that took place at the Bobin Inn is directly related to the case that is before this Court, isn't that true?

A It appears to be the same operation.

Q In the search of the Bobin Inn--

THE COURT: How do you spell Bobin?

MR. LANNA: B-o-b-b-i-n.

Q State authorities used certain informants. Did you use the same informants in your investigation?

THE COURT: If you know.

A I don't know what informants were used, sir.

Q Did you personally speak to any of the informants?

A No, sir, I did not.

Q Were you aware of the informants?

A I was aware there were sources of information.

Q Were these sources of information being used by your agency?

A We have our own sources of information, yes.

Q Prior to August 29,1972, did you see reports which made reference to these informants?

A Not by name.

Q I am not asking you for the name. I am asking whether there were informants in the case.

A I saw written record of information received from informants.

Q Where did you see this?

A In our office.

Q Were they working with other agents that were on this case?

A Yes, they were.

Q Can you tell me whether these--when these informants came into existence, at what point?

A No, I couldn't. I couldn't answer that question.

Q Can you tell me when the information that these informants gave as to what days they referred to?

MR. FRIEDMAN: Your Honor, I object. I fail to see the relevance at this point. There has not been any testimony from this witness as to the basis of his arrest coming from informants nor do I see any necessity for actually going into the informants since it would seem that there is significant independent proof not derived from informants which has led up to the searches in this case, your Honor.

MR. PANZER: Your Honor, there are otherissues in this case. One of them being the fruits of other seizures and I want to establish what was in this agent's mind--

THE COURT: This particular agent's mind?

MR. PANZER: Yes, the whole investigation at that

time. I think I should be allowed to explore this unless the government wants to concede that the information that the agents had as of the night of August 29, 1972 was based on informant information, surveillance that came about after the seizure at the Bobin Inn in 1971.

THE COURT: I don't understand the connection of one with the other sufficiently, but I will allow the question at this time. I must say I don't know where it is leading, but go ahead.

Q As of August 29, 1972, you had informants pertaining to this investigation, is that correct?

THE COURT: I gather he says that he is not quite sure just what they had, but he has seen some records that seemed to indicate that there were some, is that right?

THE WITNESS: That is right.

Q You had made some surveillance, you and other agents had made some surveillance, is that correct?

A Yes, there had been physical surveillance.

Q There would also be several seizures prior to August 29, 1972, isn't that true?

A I wouldn't say several seizures.

Q How many were there?

A I would have to refresh my memory on the exact number.

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Q There was one at the Bobin Inn, wasn't there?

A I am speaking specifically about our agency.

Q Your agency coordinates with the State authorities, doesn't it?

THE COURT: If you are trying to show what he knew, show what he knew.

A The question was asked as to whether our agency was involved in the Bobin Inn, and if I remember correctly, I answered that I didn't think so, so I didn't consider that as one of our seizures.

Q You were aware of that seizure?

A Yes.

Q On August 29 1972, weren't you?

A Yes, I was.

Q You were aware of other seizures that had been transpired, isn't that true?

A That is correct.

Q I believe you testified on direct examination that you arrested Mr. Peters outside the car?

A As he was getting in the car.

Q I believe you said you went around the car and at some point you were at the driver's side, is that true?

A I approached from the driver's side initially.

Q You saw something under the sun visor at that point,

isn't that true?

A No, sir. I did find something underneath the sun visor but it was after I had secured the defendants and searched the car.

Q Was that at the scene of the arrest?

A Yes, it was.

Q So that that particular item, the YUS envelope which was under the sun visor was taken from the car at the scene of the arrest, is that true?

A Correct, sir.

Q Is it true that subsequent to that, as you say, the car was taken some place, isn't that true?

A That is right.

Q Where was the car taken to?

A The car was taken to Newburgh City where it was maintained in our garage.

Q Did you search the car in New York City?

A The car was checked, I think, in the trunk for things like inflatable tire, anything that might have been misplaced or might be held accountable for later that was not evidence. That sort of thing.

Q What time was that?

A I couldn't say, sometime the next day.

Q Was the car searched in New York City that night?

A No, it wasn't. Not to my knowledge.

Q So that--you say you opened the trunk, the trunk was opened that night, is that true?

A Yes, sir.

Q At the time that you retrieved this YUS envelope from the sun visor at the scene of the arrest, was there any forfeiture order in existence?

A Not to my knowledge, sir.

MR. PANZER: May I just have a moment, your Honor?

(Pause.)

Q Did you take any currency from Mr. Peters?

A Yes, sir, I think there was some currency taken.

Q Do you know how much it was?

A I think approximately one hundred fifty dollars. Somewhere within that vicinity.

THE COURT: Was that on his person?

THE WITNESS: Yes, it was.

MR. PANZER: I have no further questions.

MR. WALL: Would your Honor permit me to ask a couple of questions I forgot?

THE COURT: Yes.

FURTHER CROSS EXAMINATION

BY MR. WALL:

Q You have testified that you observed Mr. Frangello

walk to the alley. You have told us that Agent Growney has told you that he saw Mr. Frangello put something into the trashcan.

When you first got physical custody of Mr. Frangello, how far was he from that trashcan?

THE COURT: From what?

MR.WALL: From the trashcan.

A I would say he was a few steps, seven or eight steps away.

Q Again, approximately the distance between you and myself?

A That could be approximately right.

Q Would Mr. Friedman want to measure with me approximately fifteen feet? Twelve to fifteen feet? Between myself and the agent?

THE COURT: Are you asking me whether I will take judicial notice of that or whether he will stipulate. It looks to me about that.

Twelve or fourteen feet.

MR. WALL: Fine, I have no further questions.

MR. FAHRINGER: May I ask one or two questions?

MR. BELLANTONI: I have no questions, your Honor.

THE COURT: Thank you very much.

MR. FAHRINGER: We were supplied with some 3500

material and I was the first to examine and I will only take a few more moments.

THE COURT: All right.

FURTHER CROSS EXAMINATION

BY MR. FAHRINGER:

Q Officer Emory, in connection with this investigation and I am addressing your attention now to August 29 when you participated in the arrest of Mr. Michael Roman and some others, in that regard, there isn't any question the search of the automobile was to secure evidence, isn't that true?

A Yes, sir.

Q To secure evidence in terms of the prosecuting a possible policy operation, isn't that so?

A Yes, sir.

Q You, of course, filed what is commonly known as a 302, a report which is a way of preserving what happened on that day in your internal reporting system, isn't that so?

A That is correct, sir.

Q In those reports, isn't it true that you ordinarily put down what you consider to be the most important features of what transpired that day?

A You try to, sir.

Q You indicate, for instance, the basis of

in the instance of Mr. Roman, you were careful to point out

that the search was made incident to an arrest, isn't that so?

You indicated what you attributed to him in taking from him, isn't that so?

A Yes, sir.

Q Isn't it true that in these reports, and I have been supplied with three that relate to August 29, 1972 dealing with each of the individuals that were located in the car, Mr. Roman, Mr. Peters and--I beg your pardon--both of these relate to Mr. Peters. I assume there was a report made on Mr. Politi, too, which I don't have.

Isn't it true that in none of these reports is there any mention of seizures in connection with forfeiture proceedings? There is no mention in any of these reports about forfeiture proceedings.

A No, there is not.

MR. FAHRINGER: Thank you.

One other question.

Q Did I ask you this, Mr. Emory: Isn't it true that Mr. Groetty participated in these arrests?

A Mr. Growney.

Q Is that how it is pronounced?

A Yes.

Q Was he with you on that day?

A He was with me on that day, but he arrived just a moment after I had the individuals out of the car.

Q It is your testimony that you are the one who approached the car first and placed these men under arrest?

A That is correct, sir.

Q And that Mr. Growney came later?

A Just a moment later.

Q When you were in the bushes, were you lying prone?

A Yes, sir.

THE COURT: Let's be sure. Prone is on your stomach or on your back?

THE WITNESS: On my stomach.

MR. FAHRINGER: Thank you.

THE COURT: All right.

MR. FRIEDMAN: I would like to re-examine, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q You testified that with respect to observing that telephone booth, after you saw Gerald Politi enter that telephone booth and leave his slip, did you see Agent Growney there also?

A I did see him.

THE COURT: What time was this?

THE WITNESS: Agent Growney was, I think, at the booth about thirty minutes after Mr. Gerald Politi entered.

THE COURT: You came at eight o'clock?

A Yes, sir.

THE COURT: What time did you see Gerald Politi?

A 8:35, approximately.

THE COURT: So Growney was there around nine?

A Somewhere within that vicinity, yes, sir.

Q So in between the time that you saw Mr. Robert Peters enter that telephone booth and you saw Gerald Politi enter that telephone booth, you saw Agent Growney there, is that correct?

A Right.

Q You didn't see anyone else there?

A No, sir.

Q With respect to having observed this telephone booth in the past, had you ever seen Mr. Robert Peters or the car that Mr. Robert Peters was driving present at that telephone booth before?

A No, I had not.

Q On all prior occasions you had seen Mr. Cuzzo pick up the work, is that correct?

A I had seen Mr. Cuzzo deposit the work.

Q Deposit the work and who had you seen pick it up?

A Mr. Roman.

Q Driving the same car that Mr. Peters was driving on that night or driving a different car?

A A different car, sir.

Q Had you ever in the past seen Mr. Robert Peters take into the automobile that you saw on that night any items that you considered to be policy work?

A I couldn't say that I had seen any items that were definitely policy work taken in.

Q So, prior to that night, you had not seen any items that you considered to be policy work taken into Mr. Robert Peters' automobile, is that right?

A That is correct, sir.

Q Now, you testified, I believe, if I am correct, on cross examination that as far as you were ooncerned, you didn't have reasonable grounds to believe that Mr. Anthony Politi and Mr. Michael Roman that night had committed a crime in your presence. Did you answer that question in that manner?

A Yes, I did, sir.

Q Do you care to explain that answer?

A As I understood the question, I understood it to mean did I actually see, I think from what I saw, did I

actually see either Mr. Roman or Mr. Politi physically handle the envelope that was taken from the phone booth as far as guilt is concerned and that is what I understood to be meant by guilt.

As far as my feeling of their guilt in the operation of illegal gambling business and conspiracy, therefore, I did believe they were guilty of operating an illegal gambling business and conspiracy. That is what the trip to the phone booth was for, was to pick up the envelope.

I did not see them physically take the envelope.

Q As far as you were concerned, when you saw Mr. Roman and Mr. Anthony Politi in that automobile, did you believe that you had probable cause to arrest them for participating in conducting an illegal gambling business?

MR. LANNA: Objection, your Honor.

THE COURT: I will allow it. How conclusive it is is another matter.

A Yes, I did.

Q Just because there seems to be a little vagueness as to some of the questions that have been raised before as to your vantage point, when you were in the bushes, were you able to see Michael Roman putting this package down on the floor?

A I could see him place a package beneath the shelf.

Q You could see who placed the package beneath the shelf?

A Well, in the case of Mr. Cuzzo, he deposited the package. I am sorry, excuse me. I am mistaken. I misunderstood the question.

We are talking about the placing of the package in the floorboard of the car?

Q Yes.

A I am sorry. My mistake.

Yes, I could. As I walked up to the car, as I stated earlier, Mr. Politi was half in--excuse me, Mr. Peters was half in and half out of the car, so upon approaching it, I identified myself and as I peered into the car and ordered everyone out, I noticed that Mr. Roman was bent over with this package in his hand and laid it in the floorboard because at that time, of course, being the only one there, I was apprehensive of maybe a weapon being present, and I made specific note of it.

Q What I am trying to get at, though, you didn't see Mr. Roman bending over and putting the package down on the floor from your vantage point up in the bushes, you saw that as you approached the car to make the arrest, is that correct?

A That is correct.

Q With respect to the observation of things that were

going on actually inside the car, your best vantage point was when you actually physically got to the car, is that correct?

A Yes.

MR. FAHRINGER: Your Honor, I object to leading on this. I think the witness should testify.

THE COURT: I will sustain the objection. It is more argument than leading anyway.

I understand that these things were observed by the witness when he got to the car, and I understand he could see the car better when he was at it than when he was back at the bushes.

Q Now, sir, with respect to this telephone booth, this was a public telephone booth, is that correct?

A It was a public telephone booth.

Q There weren't any signs on the telephone booth that said private property, is that correct?

A That is correct.

MR. ANOLIK: I will object to this under Katz against United States 389 U.S.

THE COURT: I know the case, but what is the nature of the objection?

MR. ANOLIK: I don't think any phone booth says private, but it is an enclave whereby a person is entitled

to have his privacy respected.

THE COURT: I am entitled to know whether it was public or private, and you can argue about what the significance of that.

Q As far as you were concerned, did you see any restrictions to any member of the public going into that telephone booth and using it in any way they saw fit?

A There were no restrictions that I could see.

Q There were no enclaves around it? It was--there were no fences or anything else around it, is that correct?

A Nothing of that type. That is right, sir.

Q THE COURT: I take it there were no signs on the booth saying, "Leave your envelopes here" either?

THE WITNESS: I didn't see one, sir.

MR. FRIEDMAN: No further questions, your Honor.

MR. FAHRINGER: I have a little recross, your Honor.

RECROSS EXAMINATION

BY MR. FAHRINGER:

Q As far as this automobile is concerned, you have indicated earlier on cross examination, however, you have seen that same car make stops at other places you suspected as being policy pickups, isn't that so?

A Right.

Q So there isn't any question for some period of time,

would it be fair to say two or three weeks or longer?

A I wouldn't say two or three weeks sustained period.

Q But for a week or more?

A A week or more.

Q A week or more you suspected that this automobile was certainly being used to pick up policy slips, isn't that so?

A Right.

Q No question about that?

A I had those suspicions, yes, sir.

Q In terms of Mr. Roman on August 29, when you saw him, putting to one side the beliefs of guilt and what not, let's just talk about what you saw. You saw an automobile pull up, right?

A Right.

Q You saw a man who you have identified in the back seat as Mr. Roman, isn't that so?

A Right.

Q He was sitting there, isn't that so?

A He was inthe car, yes.

Q He never got out of the car until you arrested him?

A No, he didn't.

Q You didn't see him go into the phone booth?

A No, sir.

Q You didn't see him come out of the phone booth?

A Not on the 29th, sir.

Q On the 29th when you were charging the automobile, you had made a judgment at that point to place him under arrest, isn't that so?

A No, sir, not when I was charging, not until I saw the identities of the people there.

Q When you saw the identities, then you made the decision to place him under arrest?

A Yes.

Q You told us that judgment was made by the U. S. Attorney?

A The judgment was made to arrest the person picking up the envelope.

Q By the U. S. Attorney?

A Right, sir.

Q Once you identified the men, you made the judgment to place them under arrest, isn't that so?

A Yes, sir. There was an arrest warrant issued for Mr. Roman which I was executing, so that was not my judgment.

Q In the terms of seeing him and identifying him, then you proceeded to execute the arrest warrant?

A Once his identity was made known to me, yes.

Q You placed him under arrest, which had nothing to

do with your observing what transpired in the car with the envelope, did it? You were executing an arrest warrant, isn't that so?

A Yes, I was.

Q Whether he had bent over with an envelope or whatever, you would have proceeded to arrest him under the arrest warrant?

MR. FRIEDMAN: I object to the prior question because it assumes a fact which the witness did not respond to but tailed on and asked an additional question, asked two questions, and it is far from clear which question the witness was responding to.

I would move that it be struck from the record.

THE COURT: May I hear the question and the answer. The prior question and answer, please.

(Read.)

THE COURT: I will sustain the objection because I think the question was unclear as to its meaning.

I will allow you to pursue the question of Mr. Emory as to the reason he arrested Mr. Roman.

Q You have been very forthright--

THE COURT: He has been very forthright.

Q Isn't it true that whether Mr. Roman picked up an envelope or laid an envelope down or didn't do anything else,

you were placing him under arrest because you were executing an arrest warrant, isn't that so?

A Yes, sir.

Q That had nothing to do with your placing him under arrest, did it?

A No, it did not.

THE COURT: I am not quite clear whether you are both referring to the placing of the envelope on the floor or the car or whether you are talking about the envelope in the phone booth. When you answered the question, what did you mean, Mr. Emory?

THE WITNESS: The way I understand--

THE COURT: What did you understand Mr. Fahringer's question to mean, and what did you therefore mean by your answer?

A I think I understand his question to the point that I would have placed Mr. Roman under arrest regardless.

THE COURT: If he just sat there in the car?

THE WITNESS: Regardless, with an arrest warrant, certainly.

RECROSS EXAMINATION

BY MR. LANNA:

Q In view of that, Mr. Emory, you tell us that Mr. Peters you arrested because actually, in your opinion, he

might have been committing a crime in your presence, he went and retrieved this envelope which had been seen by one of your brother agents, is that correct?

MR. FRIEDMAN: I object to the question because it assumes a fact not in evidence. It assumes testimony by the witness which he did not give.

THE COURT: He is asking whether that is what the witness said. I must say I am a little distracted with all the things that are happening next door here, particularly since I am waiting for a verdict and it doesn't sound like it is coming.

MR. LANNA: Perhaps I can rephrase it.

THE COURT: Will you please.

Q Is it your testimony, Agent Emory, that you placed Mr. Peters under arrest because you were so directed by an Assistant United States Attorney?

A Yes, sir.

Q Anyone who went and picked that envelope up was to be arrested, correct?

A That is correct.

Q Very well. It was your opinion that he probably was committing a crime in your presence?

A Yes, sir.

Q You have already told us that you arrested Mr. Roman,

who was sitting in the car, because you had an arrest warrant, is that correct, for him?

A That is correct.

Q As to Mr. Politi, I think--Anthony Politi, you have already testified in your opinion he was not committing a crime in your presence and isn't it further a fact that you did not have an arrest warrant for him?

MR. FRIEDMAN: Your Honor, I object. I believe he clarified his prior answer.

THE COURT: I will allow him to answer the question so we don't have any questions left.

A By the initial question--

MR. LANNA: I will withdraw it.

Q Didn't you testify that in your opinion Anthony Politi was not committing a crime at that time on that evening in your presence?

A I think I clarified that earlier. I clarified the point that by your question it indicated to me that guilt would only--if I thought he was guilty, then he had been the one to retrieve the envelope from the phone booth and that particular agent I didn't see. You asked me what I saw and I did not see that.

Q All right, in other words, you didn't see Anthony Politi get that envelope, did you?

A No, I didn't.

Q You didn't see Anthony Politi do anything except sit in the car?

A He was in the car.

Q Now, did you have a warrant for Anthony Politi's arrest?

A No, sir.

Q Did any of your brother officers have a warrant for his arrest?

A Not to my knowledge.

Q So you arrested Anthony Politi despite not having a warrant and despite his not doing anything in connection with that envelope, correct?

A Correct, sir.

MR. LANNA: I have no further questions, your Honor.

MR. PANZER: Your Honor, I have just one question, if I may.

CROSS-EXAMINATION

BY MR. PANZER:

Q Mr. Emory, just to clarify things, isn't it a fact that you arrested Mr. Peters outside of the car?

A I think I have stated it several times that I arrested him as he was getting in the car.

Q Did he ever physically sit down in the car?

A At this point the door was open. He was in physical movement. He could have had his foot in the floorboard, been in the motion of putting it on the floor-

board but he was in the physical act of getting into the car. I guess he was between the place where he stops walking and getting into the car just prior to sitting down.

Q Was he sitting down at the time you arrested him?

A He was in the motion of getting in the car. I don't think he was; no sir.

MR. PANZER: Thank you, very much.

THE COURT: Do you have any further questions, Mr. Friedman?

MR. FRIEDMAN: Yes, I do. I'm sorry, your Honor.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q Did he physically have one foot in the car, do you know?

A (No response.)

Q You don't know?

THE COURT: One foot in the door.

A He was on the--All I can tell you is that he was in the process of getting into the car. That's all I can tell you.

Q He had opened the car door; is that right?

A Yes, sir.

Q Now, am I correct that in regard to the questions with respect to the arrest warrant, there was an arrest warrant outstanding for Michael Roman at the time you saw him seated in the car; is that right?

A Yes, sir.

Q As far as you were concerned, since there was an arrest warrant outstanding, you were obligated under the law to make that arrest; is that correct?

MR. FAHRINGER: I object to the leading. I think the witness should be permitted to testify. That's all I am saying.

THE COURT: I have gotten all of this already, Mr. Friedman.

MR. FRIEDMAN: Okay.

Q Now, just with respect to Mr. Fahringer's questions about did you believe that you had grounds, any grounds for making an arrest of Mr. Roman regardless of that arrest--

THE COURT: You don't mean that Mr. Fahringer asked that, do you?

He asked whether he would have arrested Mr. Roman regardless of what else occurred, and Mr. Emory said yes, he would have; is that correct?

THE WITNESS: Yes.

THE COURT: Mr. Fahringer?

MR. FAHRINGER: Yes, your Honor. It is correct.

Q Without the arrest warrant, did you believe you had grounds to arrest Mr. Roman?

A Yes, I did.

MR. FAHRINGER: No further questions.

MR. FRIEDMAN: Thank you.

THE COURT: You are excused.

(Witness excused.)

MR. WALL: Your Honor, I wonder if I might make a request. Is it the government's intention with respect to the arrest and search of Mr. Frangello to rely solely upon the warrant of arrest and the information contained in the affidavit or is he going to take the position that if that affidavit was insufficient, that there is additional information not contained in the warrant upon which he is relying?

MR. FRIEDMAN: I will rely on the arrest warrant, your Honor.

THE COURT: That simplifies it a lot.

MR. WALL: It certainly does.

MR. FRIEDMAN: Mr. Michael Growney, please.

MICHAEL GROWNEY, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q What is your occupation, sir?

A Special Agent with the Federal Bureau of Investigation.

Q And how long have you had that position?

A Approximately three-and-a-half years now.

Q And did you have occasion to be on duty on 6/15/72?

A Yes, I did.

Q At that time did you have occasion to see Mr. Arthur Frangello?

A Yes, I did.

Q Where did you see him?

A I saw him standing in front of the Twilight Bar in Newburgh, New York.

Q What if anything did you do and observe with respect to Mr. Frangello?

A There had been an arrest warrant issued for his arrest, and upon seeing him on the street I exited a car and ordered him to halt and told him it was the FBI and that he was under arrest.

Q What if anything did you observe him do?

A He started walking away from me towards some trash cans alongside the bar, and I again told him to halt, and he again ignored me, and by the time I caught up with

him he had placed some white pieces of paper in the trash can. I placed him under arrest, put him up against the wall, took two pieces of paper from his hand, and then retrieved the other two pieces of paper from the trash can.

Q Did you observe what the pieces of paper in the trash can were?

A They were slips of paper with numerical and alphabetical notations on them which, from my experience, I realized were gambling records.

Q Now, sir, did you have occasion to be on duty on 8/29/72?

A Yes, I did.

Q And where were you on duty?

A I was approximately at the intersection of Saw Mill Parkway and Tompkins Avenue in Yonkers, New York.

Q And when did you arrive there?

A Approximately eight o'clock.

Q What if anything did you do when you arrived there?

A Upon first arriving there we took up a position, another agent and myself, in a car approximately--

THE COURT: Who was the other agent?

THE WITNESS: I'm not sure who was in the car with me, your Honor, that night. I believe it was Mr.

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Gulbicki.

THE COURT: Was it Mr. Emory?

THE WITNESS: No, sir. He was not in the car with me.

THE COURT: All right.

A And we took up a position in the bureau automobile and we were communicating by radio with the other agents and with Special Agent Emory who was stationed a short distance from a phone booth in the Gulf Service Station which is located at that intersection.

We were waiting for Mr. Cuzzo who had previously dropped an envelope at that phone booth. Mr. Cuzzo did not show up.

While we were waiting, Mr. Gerald Politi was seen by Mr. Emory to enter that phone booth. He radioed to us. I could not see it from where I was, that Mr. Politi had entered the phone booth and he thought he put an envelope under the platform of the phone booth, so I went up to the phone booth from where I was and entered the phone booth and saw this envelope underneath the platform.

It was an envelope approximately seven inches long and three inches wide. It was rolled up with a rubber band around it.

I took the rubber band off the envelope, saw that

on the face of the envelope was the initial B with a circle around it.

I opened the envelope, and in the envelope was a slip of notebook paper--excuse me--tape approximately three or four inches wide, that had alphabetical and numerical notations again, that from my experience, I knew was policy records.

I placed the piece of paper back in the envelope, put the envelope back underneath the platform in the phone booth, left the phone booth and advised Mr. Emory that it was policy records.

Mr. Rider, sitting right here, also heard the transmission between myself and Mr. Emory, and he stated that he was going to call the Assistant United States Attorney concerning the arrest of anyone who stopped to pick the envelope up.

Q The envelope that you opened, was it sealed?

A No, sir, it was not.

Mr. Rider then subsequently called back and said that the Assistant United States Attorney had authorized the arrest of anyone coming to pick up that envelope.

Approximately a half-hour later there was another transmission from Mr. Emory that Mr. Peters, Bobby Peters, had entered the phone booth.

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At that time we again proceeded from where we were parked in the bureau car, came up, and Mr. Emory had arrested Mr. Peters, Mr. Roman, and Mr. Politi; had them outside the car, and I watched Mr. Bulbicki, another special agent with the Federal Bureau of Investigation, take this envelope that I had seen in the phone booth from the front of Mr. Peter's front pocket.

THE COURT: What agent took it from his pocket?

THE WITNESS: William Gulbicki.

THE COURT: How do you spell that?

THE WITNESS: Gulbicki.

THE COURT: Thank you.

A (Continuing) I then re-entered the phone booth and checked, and at that time I observed that the envelope was no longer inside the phone booth.

Q Then you observed that this envelope that Mr. Gulbicki took from the pocket of Mr. Peters was the same one that you had seen in the telephone booth?

A Yes, sir.

MR. FRIEDMAN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mr. Growney, who was in charge that evening of the detail that took these men into custody?

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A At the telephone booth, sir?

Q Yes.

A Mr. Gulbicki was the supervisor in charge.

Mr. Rider was the case agent.

Now, who exactly--

Q How many men were at the scene there?

A Probably, I would say, eight to ten.

Q Eight to ten. Was Mr. Rider there?

A I don't remember.

Q But you and Mr. Emory and Mr. Gulbicki were the ones who, I take it, had dealings with the men themselves?

A Yes. There were other agents there too. I remember those, and Mr. Barnett was there.

Q Now, did you say, under examination by Mr. Friedman, that the communication to you was that he thought he had put an envelope in the telephone booth?

A Sir, he said that he had placed something. I'm not sure he said an envelope. He definitely said that he had placed something underneath the platform, if you understand what I mean, that the phone book opens up on, underneath there.

Q Did he use the word "thought"?

A No, he didn't; he said "something."

Q So when you said, on direct examination, he thought

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he had put an envelope in the booth, you were mistaken?

A Yes.

Q And that wasn't true, I take it?

A No. He had placed--

THE COURT: It wasn't true that he said it?

THE WITNESS: That's right.

Q Now, did you have on your person any arrest warrants at all?

A No, sir.

Q And did you have any process of any kind on you?

A No, sir.

Q For the forfeiture of the car, or anything of that sort?

A No, sir.

MR. FAHRINGER: No further questions.

CROSS-EXAMINATION

BY MR. LANNA:

Q Agent Growney, do you recall the first agent that got to the automobile?

A It was Mr. Emory.

Q And did you follow rather quickly behind him?

A Yes.

Q And I represent the defendant Anthony Politi; do you recall whether Mr. Anthony Politi was searched at

the scene, personally searched?

A He would have been patted down for weapons.

Now, whether he was searched for what we call a strip search or not, I am sure he was not.

Q Well, were his pockets gone into?

A Yes.

THE COURT: Whose pockets?

MR. LANNA: Mr. Anthony Politi's.

Q Do you recall which agent did this?

A No, sir, I don't

Q Of course, you don't recall -- you do recall that it was not yourself?

A That's right. It was not myself.

MR. LANNA: I have no further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q When you say that the envelope was not sealed, did you have to lift the flap, however, to look into it?

A It was rolled up. It had a rubber band around it. When I took the rubber band off, I don't remember whether I had to lift the flap up to look into it or not.

Q But you had to do something to look into it; how did you manage to look into it?

A Took the rubber band off.

Q Had you received permission from the United States Attorney to do that?

A No.

Q Someone had secured prior permission to make an arrest?

A Yes.

Q Would it be fair to say then that to make a search you would use your own discretion or make your own permission?

MR. FRIEDMAN: I object to that.

THE COURT: Sustained.

Q When you looked into the envelope, did you communicate to anyone else what you saw in the envelope or what you thought you saw in the envelope?

A When I came back to the car, I put it out over the Bureau radio and anybody within the transmission of the radio would have heard it.

Q Can you tell me whether or not you communicated that fact to the U.S. Attorney?

A I don't believe so. Mr. Rider said he would have had to call the U.S. Attorney, sir.

THE COURT: By telephone?

THE WITNESS: Yes, sir.

Q Would it be fair to say that but for the permission which you understood you had, to make an arrest,

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from the U.S. Attorney, that without that permission you would not have made the arrest; is that correct?

A No, sir. I believe that assuming that we could not have reached the U.S. Attorney, we still would have arrested whoever went into that phone booth.

Q No matter who it was?

A If they would have taken the envelope.

Q That envelope was left in approximately the same place it had been put originally?

A You mean where I--Yes.

Q You didn't put anything in it, or take anything out of it, did you?

A No, sir.

MR. ANOLIK: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. WALL:

Q Approximately what time was Mr. Frangello placed under arrest on June 14th?

A Between four and five, I believe.

Q In the afternoon?

A Yes.

Q And you and Agent Emory had traveled together by automobile to the vicinity of the arrest?

A Yes, sir.

Q You testified that you made an announcement to Mr. Frangello that you were FBI agents "Hold it," he was under arrest?

A Yes.

Q How far away were you from him at that time?

A The first time I would say thirty yards at the most.

Q Had you seen him do anything prior to making that announcement, prior to your making that announcement?

A No, sir. He was standing on the street.

Q Had he talked to anybody?

A He was talking to a woman in a car.

Q That is sufficient.

Now, when you first made the announcement, you were approximately thirty yards away from him, is that right?

A Yes.

Q And you said that he ignored you and began to walk towards some trash cans?

A Yes, sir, he did not stop.

Q Were they located in an alley near the Twilight Bar?

A I wouldn't call it an alley. I would call it

just between the bar and the house there is, maybe, six or eight feet. I don't believe it would be wide enough to drive a car up and down it.

Q So when he paid no heed to your announcement, you made another announcement to him; is that correct?

A Yes.

Q And he continued to walk towards the trash cans, did he?

A Yes.

Q About how far away from him were you when you saw him place something in the trash cans?

A Fifteen feet, 20 feet.

Q Then, after doing that, he turned around and walked back?

A No. He turned around and just looked at us as we approached him.

THE COURT: Gentlemen, it is very difficult for you too, I am sure, but it is certainly difficult for me to try to pay attention to you so I find that courtroom 508 is free now, and I suggest that all of us except the court clerk go to that room. Please go to room 508 or 509. Yes, 509.

(The following proceedings took place in Courtroom 509.)

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CROSS-EXAMINATION

BY MR. WALL (continued):

Q Agent Growney, from the first place where you were when you saw Mr. Frangello approach the trash can and place something into it were you able to see what it was that he was placing into it?

A I was not sure how many but I would say two to three pieces of white paper.

THE COURT: You are talking about what you saw him put in, not what you saw him take out?

A That's right.

Q So you were able to observe that it was approximately two or three pieces of paper?

A That's what I thought it was.

Q There came a time when you actually placed Mr. Frangello in your physical custody; is that correct?

A Yes, sir.

Q And you conducted a search of his person?

A Yes, sir.

Q And I believe you told his Honor that during the course of that search you discovered two slips of paper?

A Yes, sir. He had them in his hand.

Q They were in his hand; is that correct?

A Yes.

Q And after you had secured Mr. Frangello, you then went back to the trash can to see what had been placed in it or to recover what had been placed in it; is that it?

A Yes.

Q And when you did that was Mr. Frangello left in the custody of Agent Emory?

A There were two state troopers there too. It was practically an instantaneous thing. Took it from his hand and went right to the trash can.

Q When you did go to the trash can, Mr. Frangello was secured by the agents, either Agent Emory or the two officers or all of them; am I correct?

A Yes, sir.

Q What did you find in that trash can in addition to the two pieces of paper that you testified about?

A I can't recall what else was in the trash can. I took out what was on the top. There might have been a bag. I really can't remember what else was in there.

Q But it is clear that there were other things in that trash can in addition to the two pieces of paper that you retrieved from it?

A Yes, sir.

Q And I take it that you do not have available at

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this moment either the two pieces of paper retrieved from the can or the two pieces of paper that you took from Mr. Frangello's hand; is that correct?

A That's correct. I believe that's correct.

MR. WALL: I have no further questions. your Honor.

MR. PANZER: No, your Honor, no questions.

THE COURT: All right; thank you.

MR. FRIEDMAN: Just one further question, your Honor.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q With respect to the items that you found in Mr. Frangello's hands and the items that you found in the garbage can, were they similar in nature?

A Yes, sir.

Q Did they both appear, from your experience, I mean as an FBI agent, to signify anything or to represent anything?

A Gambling records.

Q And did you find any other slips of paper that were approximately the same size or the same shape, or looked in any way similar to the onces that you had seen Mr. Frangellow put into the garbage can also in the

garbage can?

A None whatsoever.

MR. FRIEDMAN: No further questions.

RECROSS-EXAMINATION

BY MR. WALL:

Q Did you make a search for any thing else?

A Yes, sir. I went through everything in that garbage pail.

Q What was in it?

A I believe I testified that there was a bag of trash but I just--all I remember is that there was nothing else that--

THE COURT: Residential refuse, you mean?

THE WITNESS: Yes, sir.

Q So you went through that bag of trash?

A Yes, sir.

MR. WALL: No further questions.

THE COURT: Thank you very much, Mr. Growney. You are excused.

(Witness excused.)

MR. FRIEDMAN: Special Agent Barton, please.

MR. WALL: Your Honor, I wonder if from time to time counsel may leave the courtroom if their respective clients are not involved in that count.

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THE COURT: Yes. Just stay in the nearby courtroom.

MR. FRIEDMAN: This pertains to the search of Mr. Visconti on 6/14/72.

LOWELL L. BARTON, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q Will you please state your name, and spell it?

THE COURT: He has done it.

Q Would you please state your occupation?

A I am a special agent with the Federal Bureau of Investigation.

Q How long have you had that occupation?

A Twenty-one and a half years.

Q Sir, did you have occasion to be on duty on 6/14/72?

A I did.

Q And where were you stationed at that time?

A Poughkeepsie, New York.

Q And what if anything did you do and observe pertaining to this case on that date?

A I was participating in a surveillance of a 1970 brown Cadillac being driven by Lonnie Johnson, and I

observed it departing from 94 Garden Street and proceeding through various streets, crossing the Mid-Hudson Bridge to Route 9 where it proceeded south into the City of Newburgh and in a more or less deserted area on South Water Street I saw it pull up behind a Karmann-Ghia and the driver got out, passed something to the occupant of the Karmann-Ghia and then got back into the Cadillac again.

The Cadillac, or the Karmann-Ghia then proceeded going south on Water Street and--

THE COURT: Did you follow the Karmann-Ghia then?

THE WITNESS: I observed the Cadillac after I passed and made a U turn and proceeded in a northerly direction.

I had been advised that there was a warrant outstanding for the arrest of Lou Visconti. I described the car and the license plate on the car over the air, and they said that was the car owned by Lou Visconti.

Q Another agent informed you of that?

A Yes.

Q And you had been informed, prior to that, that there was an arrest warrant out for Mr. Louis Visconti?

A I had.

Q Continue, please.

A We then proceeded about three or four blocks and I pulled the Karmann-Ghia over and got out and walked back to it.

Q How did you go back to it and pull it over?

A I used the siren on the car and signalled him to pull over, which he did.

I then walked back and I identified myself.

Q Prior to walking back, prior to identifying yourself, did you observe anything?

A Yes, sir. As I started back, the left door of the car opened and a package was either kicked out or knocked out and fell below the left front door.

THE COURT: Of the Karmann-Ghia?

THE WITNESS: Yes, sir.

Q So as you were walking back bef ore you identified yourself, you saw a bag being dropped from the automobile?

A It was a brown package that was dropped on the ground and came to rest below the left front door.

I then walked back and asked him if his name was Louis Visconti, and he said it was.

THE COURT: Was he the driver?

THE WITNESS: He was the lone occupant of the car. Yes, he was the driver.

A And I advised him that he was under arrest, that there was a warrant outstanding for him for participating in an illegal gambling operation.

I then advised him of his rights, and then I turned him over--I asked him, first of all, if he--what the package was that had dropped out of the car on the ground.

He said he didn't know anything about it.

This package consisted of a bundle of brown envelopes about two-and-a-half by four inches, wrapped in a rubber band, and I then turned him over to the custody of another agent, Larry DeWitt, and looked inside the car--

THE COURT: Was he with you at the time or did you take Mr. Visconti to the other agent?

THE WITNESS: No. He was with me at the time. He had pulled up behind Mr. Visconti's car.

Q Do you know what policy slips are, or did you know what they were at that time?

A I had been advised to be on the lookout for packages, brown envelopes consisting of brown envelopes which I understood was the work for a policy operation, and also for a brown paper bag possibly wrapped or sealed with masking tape.

I think I-

Q Did you recognize this as being what you were looking for, sir?

A Yes, sir. I recognized this as being what had been described to me as making up the work.

Q In a policy operation?

A Yes, in a policy operation.

I looked inside the car and under the left front seat was a brown package, a paper bag sealed with masking tape.

It was later determined that this brown paper bag had $22,072 in currency--I'm sorry. It had $1,072 in currency and $20 in change in it.

Also, off of Visconti, in his personal possession we took approximately $127 in cash.

Q Now, sir, prior to setting out that date you had been advised that cars which had been used with respect to gambling operations were subject to seizure, sir?

A Yes, we had. We had been furnished the descriptive data of the cars, and furnished the names of persons for whom warrants were outstanding.

Q And you had no search warrant for that automobile; is that correct?

A Yes, sir, that is correct.

Q However, you both seized and conducted a search

incident to the arrest of that Karmann Ghia automobile; is that correct?

A That is correct.

MR. FRIEDMAN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. WALL:

Q Agent Barton, you have just testified that at some time prior to your arrest of Mr. Visconti you had received descriptions of various cars which had been used in the operation of the policy ring?

A Yes, sir.

Q And can you tell us whether or not you received that information orally or in writing?

A Well, we were--I don't quite understand your question.

Q You have testified that before arresting Mr. Visconti there had come a time when you had received, I take it from other agents, a description of various cars which had been used in the operation of a policy ring; am I correct?

A That's correct.

Q Did you receive that information orally or did you receive a written notation as to those cars?

A No. We were furnished the information orally.

Q Who gave you the information as to those cars?

A Carl Amaditz, a special agent.

Q About how many descriptions did he give you, Agent Barton?

A He described about three or four different cars, that we should be alert for, as those originating out of the Poughkeepsie area or contacted by cars working out of the Poughkeepsie area.

Q Do you recall when he gave you this information orally he appeared to be reading from any document which contained that information?

A Yes, he did.

Q When that information was given to you, was a Karmann Ghia included among the cars that you were to be on the lookout for?

A It was.

Q So I take it then that there is somewhere a document which Agent Amaditz was reading from when he gave you that information?

A Yes, sir.

Q Now, had you ever had Mr. Visconti under surveillance prior to the time you placed him under arrest?

A I had not.

Q And you have--

A Except for the two blocks or three blocks that I followed him.

Q So he was at least facially a relative stranger to you?

A Yes, sir.

Q In fact, it was someone else who had to tell you that that was Mr. Visconti and that there was a warrant out for his arrest?

A No, sir. They told me that that was the car that belonged to him and he said he was Lou Visconti when I arrested him.

Q Did there come a time just before that when you saw a person in another car hand him something?

A Yes, sir.

Q Do you know who that other person was?

A Yes, sir.

Q Who was it?

A Lawrence Johnson.

Q And had you ever had Mr. Johnson under surveillance before?

A I never had; no, sir.

Q You had received information from brother agents that Mr. Johnson was suspected of being involved in a policy

operation?

A Yes, sir.

Q Now, you have testified that you put on your siren and stopped Mr. Visconti, correct?

A Yes, sir.

Q And asked him if he was Mr. Visconti?

A Yes, sir.

Q And he told you that he was?

A Yes, sir.

Q And then you placed him under arrest pursuant to that warrant that you have been advised about?

A Yes, sir.

Q When was it that you saw this package either being kicked out or falling out of the car?

A As I got out of my car and walked towards the car, the Karmann Ghia.

Q So there isn't any question in your mind but that that package of envelopes, at least initially, was in that car before it got to the street?

A That's correct.

Q And after Mr. Visconti identified himself, it was then that you placed him under arrest, am I correct?

A Yes, sir.

Q Was a search of his person conducted at that time?

A No, sir. It was subsequently when we took him up to the car that we searched his person.

Q How soon after you placed Mr. Visconti under arrest did the other officers arrive?

A Well, it was simultaneous. I pulled ahead of his car; the other agent pulled up behind.

Q You testified also that there was a search made of that car?

A Yes, sir.

Q The inside of it?

A Yes, sir.

Q And that is where you found a package wrapped in brown paper; am I correct?

A Yes, sir.

Q And you intended, did you not, to search that car for evidence to be possibly used against Mr. Visconti and others connected with this policy operation?

A Yes, sir.

Q Do you know whether or not at any time, either before Mr. Visconti's arrest or after, there has ever been any formal proceeding commenced in any court with respect to the forfeiture of that vehicle?

A I have no personal knowledge of that, sir.

Q Did you examine the contents of the package

which you found in that car?

A Would you repeat that again, please?

Q Yes. I take it that you examined both the package of envelopes which was on the ground, having been first in the car?

A Yes, sir.

Q And you also examined the package which was found in the car?

A Yes, sir.

Q Now, which one did you examine first?

A I picked the envelopes up off the ground and showed them to him and asked him if he knew anything about them and he said No.

Q And you knew that was falso, though, didn't you?

A I believed it to be false; yes.

Q And prior to having asked him that question, had you advised him of his rights with respect to questioning him?

A Yes.

Q In other words, did you give him the Miranda warnings?

A Yes, sir.

Q Would you tell us what it was that you told Mr. Visconti when you advised him of his rights?

A I advised him that he had the right to remain silent, and any statement that he did make could be used against him in a court of law, that he had a right to have an attorney, and he had a right to have an attorney present, that is, during the questioning if he wanted one, and if he could not afford an attorney, one would be appointed for him by the court, and that if he did decide to answer any questions, he had the right to stop answering at any time.

Q Did you ask him if he understood those rights?

A Yes, sir. I furnished him with a printed copy of the rights and he said "I know what my rights are."

Q Did he tell you what position he wished to take with respect to his rights? Did he say "I waive them" or did he say "I wish to rely on my rights" or--

THE COURT: Or did he say something else, anything?

Q --did he say anything else?

A He only made the comment that "I haven't done anything wrong."

Q But specifically with respect to your advising him of his rights, did he indicate to you in any way what position he wished to take with respect to the rights about which you had just advised him?

A No, sir.

Q So that when you turned to him and asked him if he knew anything about this package of envelopes, you had not received from him a statement that "I know my rights but I am willing to answer questions"?

A Yes, sir, I had. He said he knew his rights.

THE COURT: He said he knew his rights?

THE WITNESS: Yes, sir.

Q When you asked him that question about the package of envelopes, had he, at that time, told you that he wanted to waive those rights?

MR. FRIEDMAN: Your Honor, the question was already asked and answered.

A No.

THE COURT: Now it has been answered again.

Q When you examined the package of envelopes did you open up each of the envelopes that were tied together?

A No, sir.

Q Did you examine the contents of any of those envelopes?

A I noted that the outside had various numbers and letters on them, and subsequently I turned them over to one of the other agents when we arrived at the New York State Police barracks.

Q So that the examination of the contents of the

envelopes took place at some time later?

A Yes, sir.

Q And approximately how much later?

A Twenty minutes, 25 minutes.

Q And at a different location?

A Yes, sir.

Q And where was Mr. Visconti when the contents of those envelopes were examined?

A He was in a room at the New York State Police barracks sitting with us.

Q Under arrest?

A Yes, sir.

Q In custody?

A Yes, sir.

Q With other agents around?

A At least one other agent; yes.

Q Was he handcuffed at the time?

A Not after we got inside the barracks.

Q Where was it that you made an examination of the contents of the package which was found inside the car?

A In the same room.

Q So that in the same room at the same time--

A Yes, sir.

Q And under the same circumstances?

A Yes, sir.

Q Were you alone in your automobile at the time that you placed Mr. Visconti under arrest?

A I was alone in my car; yes, sir.

Q Alone?

A Yes.

MR. WALL: Will your Honor bear with me for a moment?

THE COURT: Yes.

(Pause.)

MR. WALL: And I have no further questions, your Honor.

THE COURT: Anything else, Mr. Friedman?

MR. FRIEDMAN: Yes, your Honor. Just a few questions.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q With respect to looking into the contents of the envelopes that you saw on the ground, you observed notations on the outside, is that correct?

A Yes, sir; at that time.

Q At the actual time when you picked up the envelopes and showed them to Mr. Visconti, actually before you went into the car, you observed notations on the envelopes

and you also observed that they were small envelopes in a large package; is that correct?

A Right.

Q And those notations and the size of the envelope and it was they way they were packed together--what did these mean to you?

A They way they had been described, it was what had been described to me as envelopes in which the work would be contained.

MR. FRIEDMAN: No further questions, your Honor.

MR. WALL: Excuse me. Before the agent leaves the stand, would Mr. Friedman be willing to stipulate that at no time was any effort made by either federal or state authorities to seek a search warrant with respect to the contents of those two packages?

MR. FRIEDMAN: I would so stipulate.

THE COURT: All right.

MR. WALL: Thank you.

THE COURT: Thank you, agent.

(Witness excused.)

MR. FRIEDMAN: James Boylan, please.

MR. WALL: I think it might be helpful also, your Honor, if Mr. Friedman could check to see whether or not there had ever been instituted with respect to any of

the cars in this case any formal proceedings with respect to the forfeiture of those--

THE COURT: Yes. I would like to have the information as to that; just precisely what influence it will have remains to be seen.

MR. WALL: Thank you.

JAMES BOYLAN, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q Sir, would you please state your occupation?

A Senior investigator, New York State Police, Peekskill Barracks.

Q How long have you had that occupation?

A Nineteen years.

Q Have you participated in numerous gambling arrests and searches during your 19 years of experience?

A Yes, sir.

MR. WALL: Excuse me. Your Honor, may we find out what search this testimony is directed to?

MR. FRIEDMAN: This was directed to a search of Michael Camporeale on August 22nd, 1972.

MR. WALL: Thank you.

Q Now, sir, did you have occasion to be on duty on 8/22/72?

A Yes, sir, I did.

Q And would you please state what you did and observed with respect to this case on that date?

A On August 22, 1972 I was on routine patrol with Investigator Sarnowski. We were patrolling within the City of Peekskill, and while proceeding along Washington Avenue we observed a green Opel sedan being operated by Michael Camporeale.

We were both approaching each other and he recognized me--

MR. WALL: I will object to the statement that he recognized --

THE COURT: Sustained.

Q Did you observe his face?

A I observed his face, and I recognized him as a fellow.

Q Did your eyes meet?

A Yes, sir.

MR. BELLATONE: Your Honor, could the witness be allowed to answer the question? I believe Mr. Friedman interrupted him before he finished.

THE COURT: I don't object to his keeping the testimony on the track, but please don't lead him, either.

MR. FRIEDMAN: Yes, sir.

THE COURT: All right. You looked at each other's eyes. Let's get on.

A (Continuing) -- at which time I recognized him as a subject who was previously arrested for promoting gambling and for possession of gambling records. We made a U-turn and proceeded after Camporeale, who had now started to raise his speed.

Q As soon as he saw you, did you observe what he did?

MR. BELLATONE: I object to the form of the question.

THE COURT: Sustained.

Just tell us what you saw, in your own words.

A We proceeded to follow him down to Welcher Avenue, and where the overpass is on Route 9 over Welcher Avenue, we saw a package thrown from the vehicle. We immediately stopped, and Investigator Sarnowski proceeded to bring the package to the vehicle.

THE COURT: To your vehicle?

THE WITNESS: Yes, sir. To my troop car.

A (Continuing) -- at which time we opened one of the

packages and recognized it as policy action.

We then proceeded to go south on Route 9 in pursuit of Mr. Camporeale and also radioed ahead for road blocks.

Approximately five minutes later, we overtook Mr. Camporeale and waved him over to the side of the road, and he stopped.

Q How many occupants were there in the automobile?

A Just Mr. Camporeale.

Q And what did you do when he stopped?

A We pulled over in front of him and walked back to the car. Investigator Sarnowski, who had the package, showed it to him, and Mr. Camporeale then said, "Why don't you people leave me alone? I'm only a working man."

He then turned around and became quite angry and started to beat on the hood of the car with his hands and then started to kick the tires. For his own safety on this particular road -- there are vehicles moving quite fast -- so we tried to restrain him, and then we did actually get him into the troop car, at which time he was placed under arrest.

Q Was he warned of his rights?

A Yes, while in the troop car.

Q And what did he say after you warned him of his

rights?

A He made statements prior to it which were spontaneous-type statements of the nature where there were obscenities and where he did mention the name --

MR. BELLATONE: Your Honor, before the witness gives us these statements, can he tell us where they were made? He said they were prior to the rights given. Can we have --

THE COURT: How soon after you stopped him did he make these statements you are about to tell us about?

THE WITNESS: Immediately. Immediately.

Q Immediately after you got out of the car?

A As soon as we got out of the car, and he saw that we had the work, he just became completely angry and started shouting all kinds of obscenities and striking the vehicle and then resorting to kicking the tires.

Q What did he say when --

THE COURT: Aside from the obscenities, which we are not interested in --

THE WITNESS: It was just a matter of obscenities, mentioning, "I told him I did not want to go back up there. I pled with the man."

We then got him into the troop car, at which time I then advised him of his rights under Miranda, and he

continued in a more subdued manner these obscenities relating to Politi.

THE COURT: To Politi?

THE WITNESS: To the name Politi.

THE COURT: Just the surname?

THE WITNESS: Just the surname.

A (Continuing) I then tried to draw him out as far as which Politi, either Phil or Tony, and all he would reply to is, "You know who I'm talking about. I don't have to tell you."

THE COURT: Would you excuse me for just a minute? I have just received a message from the jury in the other case.

(Pause.)

THE COURT: Well, let's finish the cross-examination of this witness, and then I have to take a short recess.

MR. FRIEDMAN: Thank you.

Q Sir, did you have any discussion with respect to the Peekskill Police Department?

A I asked Mr. Camporeale numerous questions.

Q Before or after he was warned of his rights?

A After. And while we returned to the barracks, at the barracks and up to arraignment, we had a nice convers-

ation, constant.

Q What did he say?

A He said many things. He said he was a trusted employee of the Politi operation. I asked him how come he was in a position to hold work so long, and that's when he said that he was a trusted employee. I asked him if he ever did work in an office, and he said yes.

Q What kind of office? Did you ask him that?

A A policy office. That's whatwe were referring to in the course of our conversation. I asked him who was on the pad, and he said, "I don't know. I don't handle that."

It was a normal conversation. It was -- there were no problems.

Q Did he say that he had begged not to be sent back to the area?

A He said --

THE COURT: He already said that, Mr. Friedman, but I think you are leading. Furthermore, I don't see what this particular type of conversation, as colorful as it is, has to do with the motion before me. Whether there was probable cause to arrest it would seem to me would depend on what was said before the arrest.

MR. FRIEDMAN: I just meant with respect to the

fact that there are certain motions with respect to statements of defendants also before your Honor.

THE COURT: I see. All right. I told you this morning I have not had a chance to look at them all, so be sure that we do stick to the motion.

MR. FRIEDMAN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. BELLATONE:

Q Officer, were you driving the troop car?

A Yes, sir.

Q Was this a marked car of any type?

A It is not a marked vehicle, sir.

Q What type of dress were you in?

A Shirt and tie.

Q How about your brother officer?

A Same way.

Q Now, prior to this day of August 22, 1972, when was the last time you saw the defendant Camporeale?

A Previous day on the 21st.

Q Did you speak with him on that day?

A I arrested him.

Q You arrested him the previous day?

A Yes, sir.

Q Was there a warrant out for him on the 22nd?

A No, sir.

Q Prior to your chasing after him and apprehending this envelope, did you see him commit any act that in your opinion you thought was a crime?

A No, but --

Q Just yes or no.

A I arrested him the previous day, and he was on the same route of travel. We both looked at one another. We recognized each other.

MR. BELLATONE: I move to strike the answer as unresponsive.

THE COURT: I think it is unresponsive, but I am not sure it is harmful to you. He is being very straightforward about why he arrested the man, and that may be a good or bad reason. We are here to find out why he did.

MR. BELLATONE: I withdraw the objection.

THE COURT: You saw and had reason to believe, according to your own point of view, that he had in his possession policy slips?

THE WITNESS: Yes. Policy action; right.

Q Now officer, prior to seeing him on August 22nd and saying, as you t-stified, you saw an envelope come out the window, did you observe Mr. Camporeale in conversation with any people?

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A No, sir.

Q Did you observe him pick up any package from any place or from any people?

A No, sir.

Q How many doors are there in the vehicle in which you testified you saw Mr. Camporeale?

A I don't know.

Q How close was your vehicle to his vehicle when you say you passed him, going in opposite directions?

A How close?

Q Yes.

A Three feet.

Q When your cars passed, did the drivers' sides pass or the passenger sides?

A The drivers' sides.

THE COURT: Don't they always?

THE WITNESS: Yes.

THE COURT: Except in England, maybe.

You mean contiguous to each other?

MR. BELLATONE: Yes.

Q How did the defendant Camporeale's car go -- How far did his car go until you made the U-turn and pursued after him?

A I made a U-turn immediately. We were passing an

intersection. I made the U-turn, whipped the car around and proceeded after Mr. Camporeale.

THE COURT: The question was: how far down the road or up the road had he gotten by that time?

THE WITNESS: I don't know.

Q Had you lost sight of his car?

A No. It's just that I was in the process of turning around, and I said to my partner, "Keep your eye on him," and had I made the U-turn in accordance with safety and then proceeded after the man --

Q Did you have a siren on your vehicle?

A I did, but I did not use it.

Q Did you have a red light on your vehicle?

A No. It's unmarked.

Q Some of the vehicles had the portable red lights that you can take out and put on top of the roof.

A This one did not.

Q How far behind Mr. Camporeale's vehicle were you when you say you saw a package come out the window?

A At that particular point, we were right on his tail. He held the package until we went all the way down to Wilshire Avenue.

Q What do you mean, that he held the package?

A The package was in the vehicle.

Q When was the first time that you saw this package?

A When he threw it.

Q Do you know which window it came out of?

A The passenger's side, in the front.

Q And he was driving this vehicle?

A He was driving the vehicle.

Q That was the first time you saw this package?

A That was the first time.

Q You never saw the defendant look into that package, did you?

A No.

Q Who retrieved the package: you or your brother investigator?

A Investigator Sarnowski.

Q He brought the package to your vehicle?

A That's right.

Q And you both looked at its contents?

A I told him, "Rip it open and let's see what's in there."

Q You did look at its contents?

A As soon as I saw it, I said, "That's it. Let's go."

Q Do you remember what you saw?

held together with rubber bands. We ripped open one side. We saw what we recognized to be policy bookmaking records.

Q How many did you see right away?

A Just took out a few slips.

Q How many plays were on these slips?

A I don't know.

Q And after that, you pursued the vehicle?

A That's right.

Q The brother officer that was with you, Officer Sarnowski: was he with you the day before, when you arrested the defendant Camporeale?

A I believe he was. Yes, sir. It was a detail of men.

Q When you pulled his vehicle over, how far behind his vehicle was yours?

A I pulled my vehicle over in front of him.

Q And how far in front of his was that?

A It was close. He had already stopped, and we just pulled right in front of him.

Q And you went back to him?

A We both did.

Q Was he in the car?

A He got out of the car.

Q Who spoke to whom first?

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A He did. He spoke to us.

Q Did he speak to you or to Sarnowski or to both of you?

A He spoke in the general direction of both of us.

Q What did he say to you?

A "Why don't you leave me alone? I'm only making a day's pay", or words to that effect.

Q Did you respond to that?

A I kind of smiled.

Q Did you say anything?

A No. Sarnowski showed him the records. He said, "I think this belongs to you." That's when he became quite angry and started banging on the hood of the car and --

Q At this time, he was not placed under arrest?

A No. I'll tell you the truth: we were trying to calm him down so that we didn't get hit with a car.

Q After that, did he say anything, or did you say something to him?

A As soon as I got him in the car, I gave him Miranda.

Q What did you say to him?

A I said, "You have a right to remain silent; do you understand that? You have a right to have an attorney; do you understand that?"

Q Did he respond?

A Yes; he did.

Q What did he say?

A He kept saying, "You don't have to keep telling me this. I know I have my rights."

I said, "Pal, if you can't afford an attorney, we will get one from the Public Defender for you; do you understand that?" And he kept saying, "Yes."

I said, "I just want you to know one thing: any statement you make can be used against you in a criminal action. Do you understand that?" And he said, "Yes." And I said, "Fine." And then he took off again about the surname Politi, intermingled with many obscenities.

Q Was that the extent of the Miranda warnings, as you gave them to him on that day?

A I believe that would cover it, yes.

Q Was there anything else that you told him about the Miranda warnings, if you can remember?

A I told him I wanted him to make sure that he understood each and every part of it.

Q Did you relate everything to the Court just now as to what you remember telling him on that day?

A "You have a right to remain silent. You have a right to have an attorney. If you cannot afford an attorney,

you have the right to have an attorney actually present." We read it off the cards.

Q Do you have one of those cards with you?

A I may have.

(Pause.)

A (Continuing) Here it is, right here.

Q Is this the card that you used?

A I carry it all the time.

THE COURT: Was that the card that you used on that day?

THE WITNESS: That's the card I always use.

Q Did you use that on August 22nd?

A That's the card I always use. Yes; I used that on August 22nd.

Q Did you make any written notations, or your brother officer: did he make any written notations in your presence while you were having this conversation with the defendant?

A No; not that I can recall.

Q Did you make any notations?

A No; I didn't.

Q Did you tape record those conversations?

A No. The only information we took was back at the barracks, when we took down the information on his

pedigree, enough for a report.

Q After the conversations at the scene where you pulled him over in your troop car, how long did it take to go from there to your barracks?

A I had no conversation with him at the scene out on the road. The only thing was to get him back in the car before one of us got hurt.

Q You did advise him of his rights?

A In the car, and then radioed for the trooper to come down for his car, and then we immediately proceeded back to the barracks with the prisoner.

Q So the conversation that you had with him, where you asked him about holding the work for a long time: that took place at the police barracks?

A Yes; I would say so.

Q Did you make any written notation at that time as to those conversations?

A No; just general, routine conversation.

Q Was Officer Sarnowski present when you had this conversation?

A He may have been. I don't know.

Q Did you ever put this conversation into any written form?

A No.

Q Did you ever tell it to any other agents who put it into written form, showed it to you, and thereafter you signed your signature?

A No. I never signed anything, but I did advise the FBI when they came up and inquired.

Q When you stopped the defendant, you did not have a search warrant in your possession or an arrest warrant?

A No, sir.

MR. BELLATONE: I have no further questions.

THE COURT: Gentlemen, I am afraid I will have to go to the jury now. I will be back, of course, if anybody wants to ask more questions.

(Discussion off the record.)

THE COURT: Let's finish this witness' testimony, and maybe we can break for the day. The way things are going, Mr. Friedman and gentlemen, do you believe that you will be able to cover whatever you want tomorrow?

MR. FRIEDMAN: Yes, your Honor. I believe so.

THE COURT: All right.

BY MR. LANNA:

Q Investigator Boylan, is it your testimony that aside from what you informed the agents in the Federal Bureau of Investigation, you have no recorded documents relative to this so-called conversation?

A No, sir.

Q You have been an investigator with the New York State Police for how long?

A Seventeen years.

Q Seventeen years?

A Yes.

Q And after arresting Mr. Camporeale, he was booked, was he not?

A Yes, sir.

Q And he was arraigned subsequently, was he not?

A Yes, sir.

Q For that matter, he has been indicted by the Westchester County Grand Jury, has he not?

A Yes, sir.

Q And you are telling us that nowhere within the files of the New York State Police is there a statement by yourself or your partner relative to the outburst of Mr. Camporeale on August 22nd of 1972?

A I would say no, sir. Speaking for myself, not for Sarnowski.

MR. LANNA: I have no further questions.

MR. LEIGHTON: No questions.

MR. BELLATONE: No questions.

MR. WALL: No questions.

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MR. PANZER: No questions.

THE COURT: All right, gentlemen, we are adjourned, then, until ten o'clock tomorrow morning, in the other courtroom.

(Witness excused.)

(Adjourned to April 3, 1973, at ten a.m.)

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UNITED STATES OF AMERICA

vs. 73 Cr. 56

ANTHONY POLITI, et al.,

Defendants

April 3, 1973
10:00 a.m.

(Trial resumed.)

MR. FRIEDMAN: Your Honor, I apologize for the fact that I have a conflict in schedule.

THE COURT: I understand you do, yes.

MR. FRIEDMAN: I am sorry for it.

THE COURT: An emergency matter has just been brought up by one of the lawyers in the other case I am handling, so I will take care of that at that time.

MR. FRIEDMAN: Thank you, sir.

THE COURT: What about the other lawyers, is Mr. Fahringer here?

MR. LANNA: I am going to sit in for Mr. Fahringer. He had to return to Buffalo, but I understand he will be back by 1 or 2.

I am going to pinch hit for Mr. Wall.

THE COURT: I am not concerned.

Let me state for the record that Mr. Blackstone has taken over for Mr. Tomashevski, represented Eddie Washington,

Leonard Harrison and Lawrence Johnson, and has advised my chambers that he will not be present during these hearings, is that correct?

THE LAW CLERK: He did not say definitely whether he would or not, but he was aware of the proceedings.

THE COURT: He apparently didn't want us to wait for him?

THE LAW CLERK: That's correct.

THE COURT: Mr. Wall, I understand, will be represented tpday by Mr. Lanna?

MR. LANNA: Yes, sir, just for a short period.

THE COURT: Unless he appears himself?

MR. LANNA: Yes, sir.

THE COURT: What about Mr. Leighton?

MR. LANNA: He is here.

THE COURT: Mr. Panzer is here. Mr. Fahringer will be represented by Mr. Lanna until Mr. Fahringer arrives and Mr. Bellantoni is here.

All right, Mr. Friedman.

MR. FRIEDMAN: Your Honor, with respect to the search without warrants, I believe we have covered them.

The next item on the agenda would be to proceed on the basis of any challenges that the defendants might have to the actual warrants.

I would just like to make a few preliminary comments as to the law, your Honor, at least to cite to the Court a couple of opinions that I did research over yesterday.

With respect to the case cited by Mr. Fahringer, the Fiorelli case, the use of hearsay, your Honor, in affidavits, in other words, one person saying that--in other words, one agent saying that he had received confidential information through another agent, that case was decided on October 13, 1972, by the Second Circuit.

THE COURT: What was the name of it again?

MR. FRIEDMAN: United States versus Fiorella and that also is 18 USC 1955 case, although the Second Circuit did say that they found upon the use of double hearsay, they did say, however, the mere fact that an affidavit contains double hearsay does not automatically make it insufficient to supply probable cause.

They did go on and uphold the search warrant in that case, your Honor.

I think that the affidavits in this case reveal substantial corroboration to independent investigation of all the informant information.

Agent Reutter has informed me, and I would so stipulate for the record, that as to each of the Federal affidavits that he swore to, he had personally spoken--

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THE COURT: I don't see how they can stipulate with regard to your own witness' testimony. If he hs questioned by defense counsel, he can testify or you can cross examine him or do as you wish.

What you were about to stipulate would seem to me to be stipulating in your own favor, which other counsel might not stipulate to.

MR. FRIEDMAN: Yes.

Also with respect to the issue of a house search initially on an affidavit appears to be a single family dwelling that turns out to have more than one party living there, your Honor, I would cite to the Court the case of United States versus Santore, 920 Fed. 2d 51 at pages 66 and 67.

That is a Second Circuit case, 1960, certiari was denied at 365 U. S. 834.

Additionally there is a survey of similar situations, your Honor, in the case of United States versus Sklavoff, 323 F Supp, 296 at pages 320 and 321, Southern District of Florida, 1971.

THE COURT: All right. Does that conclude your remarks, Mr. Friedman?

MR. FRIEDMAN: Yes, your Honor.

THE COURT: With regard to your challenges to the

warrants issued on affidavits, I think it would be helpful to me, decide a motion yourself as to who will take the laboring over as to each one of these, secondly, as you commenced examination of witnesses you tell me which affidavit, of course, you are questioning with regard to that so I can familiarize myself with the contents of the affidvit in advance and we can move along a little quicker.

Although I see Mr. Wall is here now, you seem to have been elected master of ceremonies here this morning.

Do you want to speak for defense counsel, first.

MR. LANNA: It is my understanding that relative to the testimony of yesterday Mr. Leighton is going to introduce some testimony.

THE COURT: I see. Before we proceed on the warranted searches.

Mr. Leighton, do you want to call a witness now?

MR. LEIGHTON: Yes, your Honor, I would like to call the defendant Michael Camporeale to the stand.

M I C H A E L C A M P O R E A L E, called as a witness in his own behalf, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. LEIGHTON:

Q Mr. Camporeale, let me call your attention to

August 22, 1972. Were you arrested by State Troopers on that day?

A Yes, sir.

Q Were you in Court yesterday?

A Yes, sir.

Q Did you see one of those State Troopers that arrested you in Court?

A Yes.

Q Did he testify?

A Yes.

Q Do you remember his name?

A I think it was Boylen.

Q Will you tell the Court what happened just prior to your arrest as far as you and State Trooper Boylan?

A Well, I was coming down Welsh Avenue, I think it was--

THE COURT: Welsh?

THE WITNESS: Welsh.

THE COURT: This is in Peekskill?

MR. LANNA: Yes.

THE WITNESS: Yes.

MR. LANNA: Could we discuss something that I think is important relative to these defendants testifying so that your Honor can express some judicial sentiment in connection with these matters.

If the defendants testify, I feel, so that your Honor gets the entire picture in connection with some of these searches and more especially I am speaking now of the warrant in connection with Bobin Inn, I think it is a necessary that some of the defendants will have to testify.

I would ask that the Government refrain from asking any questions outside of the area relative to the search and incidents in connection therewith.

I think it would be unfair and I don't think it would give your Honor a full understanding of what occurred.

THE COURT: Mr. Friedman, of course, the question of what the area is, I will exercise my discretion on, but do you disagree with the proposition Mr. Lanna put?

In other words, you cross examine solely with regard to the subject on which the witness has been examined?

MR. FRIEDMAN: Your Honor, I think again the question would be one for argument as to each question. I don't deny that I would be confined to the scope of the hearing and the purpose of this hearing.

Whether or not something would relate to credibility that your Honor would be entitled to weigh--

THE COURT: Of course I will have to rule if there is a dispute as to what the subject calls for, but we are agreed that you are limited to the area covered by the scope

of the hearing?

MR. FRIEDMAN: Yes, your Honor.

MR. LANNA: Thank you, your Honor.

MR. ANOLIK: Your Honor, I might say that under Simmons against United States 390 U.S. that the testimony here cannot be used against any defendant in the nature of an admission or confession unless he takes the stand at the trial.

THE COURT: I assume so, but we will worry about that at the time of trial.

BY MR. LEIGHTON:

Q Mr. Camporeale, would you start again, please.

A I was proceeding down Welch Avenue in Peekskill, New York and the trooper was coming up. I was going down. I seen him, I knew it was him, so you know, I started going a little faster. I seen him turn around and I am going down Welch Avenue, he is about maybe 30, 35 yards behind me.

So I threw a package out the window. I am proceeding down Route 9, I made a left on to Route 9.

I guess he stopped and picked up the package, but about 6 or 7 minutes later then they pulled me over and stopped me. I wasn't read my rights and they took me to the barracks in Peekskill there. They arrested me, the name Politi was never mentioned--excuse me --

Q When they pulled you over and stopped you, did they say anything to you?

A No, just to pull over.

Q Did you get out of your car or did the police come to your car?

A I got out of my car.

Q Did they say anything to you at that time or do anything?

A No, no.

Another thing he mentioned--

THE COURT: You mean when you got out of the car they didn't say a single word to you, utter silence on everybody's part?

THE WITNESS: Besides, you know, that they were BCI, I can't think of anything else.

THE COURT: Did they tell you why they stopped you?

THE WITNESS: No, sir. I had been arrested the day before.

THE COURT: I am not asking what happened the day before. I am asking you whether they told you why they stopped you that day?

A No, sir.

Q Did they put you in a police car?

A I think I went back in my car. A trooper drove my

car, I got in my car, and the other trooper followed in their car.

Q You were not placed in the trooper's car?

A No.

Q Where did they take you?

A Peekskill Barracks.

Q In the Peekskill Barracks, did State Trooper Boylen say anything to you?

A He mentioned something about Mr. Filip Politi having a heart attach or having a bad heart, something like that, to that effect, and I says, I don't know. I know nothing about it.

That is all that was mentioned about the Politi name?

Q Did they ask you who was on the pad?

A No, sir.

Q Did they ask you whether you were an entrusted employee of any specific operation?

A No, sir.

Q Did you ever tell them you were a trusted employee of any specific operation?

A No, sir.

Q Did they ever ask you if you knew what the Police Department or what Police Officers were being paid off?

A No, sir.

Q Did you ever tell them that you had any information about this?

A No, sir.

Q In the State Trooper Barracks, did any of the police officers ever read to you your rights as they testified to yesterday?

A The second time I am pretty sure they didn't.

Q When you say the second time--

A The second day.

Q That is August 22?

A Yes.

Q Was this the same police officer that had arrested you the day before?

A Yes.

MR. LEIGHTON: I have no further questions.

MR. WALL: Excuse me, your Honor, a defendant in that case also has a case before Judge Metzner and Judge Metzner tells me that Judge Mickman wants Judge Metzner to take the case first.

That doesn't involve Mr. Friedman. Mr. Tripp is going to come up and get me to go across the hall. When that is finished I will get Mr. Friedman.

THE COURT: Does that mean Mr. Friedman doesn't

have to leave yet?

MR. WALL: He doesn't have to leave yet.

MR. FRIEDMAN: The same defendants.

THE COURT: Thank you, Mr. Wall.

MR. WALL: Thank you, your Honor.

CROSS EXAMINATION

BY MR. FRIEDMAN:

xx Q Mr. Camporeale, you threw a bag out the window, is that correct?

A Yes, sir.

Q What kind of a bag was it?

A It was a gambling records, I guess.

Q Policy work?

A Yes.

Q You had picked it up?

A Yes.

Q From whom had you picked it up?

MR. LANNA: Objection, if your Honor please.

THE COURT: Sustained.

Q Now, sir, had you been arrested before for policy work?

A Yes, sir.

Q On how many prior occasions had you been arrested with policy work on your person?

MR. LEIGHTON: Your Honor, I object to the question of arrest unless it is an arrest and conviction.

THE COURT: I think that in a matter of this kind it might affect the officer's attitude and justifiably so. I will hear it.

A Once before.

THE COURT: Only arrested once?

THE WITNESS: Yes. For gambling, that was the question?

THE COURT: Yes, arrested once before with policy work on your person was the question?

THE WITNESS: Right.

THE COURT: How old are you?

THE WITNESS: 24.

Q Had you been arrested for other offenses before that?

A Yes.

Q How many other times?

MR. LANNA: Objection.

MR. ANOLIK: Objection, if your Honor please.

THE COURT: Overruled.

A Oh, maybe four or five, Iam not sure.

Q For what offenses?

MR. LANNA: Objection.

THE COURT: Sustained.

Q The day before you were arrested, is that correct?

A Yes, sir.

Q What did you have in your possession at the time you were arrested the day before?

A Gambling records.

Q You again had gambling records?

A Yes.

Q In the interim did you speak to anyone and ask them not to send you back up there?

A No, sir.

Q You spoke to no one?

A No, sir.

Q Did you have a boss as to your policy operation?

A No, sir.

Q You did not?

A No, sir.

Q You had no boss?

A No, sir.

Q Was it your--only your operation?

A Yes, sir.

Q Did you work this in conjunction with other people?

A No, sir.

THE COURT: I want to advise you that you are under

oath and I don't know anything about this, but be careful that you stick to the truth.

THE WITNESS: Yes, your Honor.

Q So this policy operation where you threw the policy work out the window, this was only your operation, is that correct?

A Yes, sir.

Q You were the sole employee?

A Yes, sir.

Q You had no other people that worked for you with respect to that operation?

A No, sir.

Q You had no bsses with respect to the policy operation?

A No, sir.

Q What were you going to do with that policy work if you had not thrown it out the window?

A Search it, add it.

THE COURT: What does that mean, search it?

THE WITNESS: Look for hits, add it up to see the amount.

Q Did you give any of the money that you obtained with respect to those bets to any one?

A No, sir.

Q You didn't.

A No, sir.

Q Had you just come from--where did you get this work that you had in this bag that you threw out the window?

MR. LANNA: Objection.

THE COURT: What was the question, please.

(Question read.)

THE COURT: Overruled.

A In Peekskill.

Q From whom?

MR. ANOLIK: Objection.

THE COURT: I think the prosecutor is entitled to probe a little this claim that this was a one-man operation.

MR. ANOLIK: I will object under Bruton against United States.

This is going into a collateral matter affecting another defendant and might be highly prejudicial.

THE COURT: Even in a suppression hearing?

MR. ANOLIK: Yes, your Honor, because it will bring out information that the Government would not otherwise be entitled to. It is a co-defendant who we are restricted in the scope of cross examination because it is a hearing.

MR. FRIEDMAN: Your Honor, I would respectfully ask him to respond to that.

Bruton versus United States pertains to a joint jury trial and the idea that a defendant cannot fairly be tried in front of a jury where a confession, which relates to a codefendant, might prejudice the jury.

With respect to this hearing, which the evidence cannot be used in the trial as a whole, your Honor, Bruton versus United States would not relate and additionally the credibility of this witness is certainly relevant.

THE COURT: There may be a relevant reason for asking questions. I am skeptical of Mr. Anolik's position on the matter, but this kind of thing is delicate and I don't think the question is critical to the determination of the issue relating to Mr. Camporeale and I will reserve decision and ask him not to answer the question for the moment. If you want during the course of the day to either refer to any passages in Bruton or any case, I will be glad to look at them.

MR. FRIEDMAN: All right, your Honor.

Q Was there any money with this work that you threw out the window?

A No, sir.

Q No money?

A No, sir.

Q What had you done with the money?

A I would collect that later.

Q You collected it later?

A Yes, sir.

Q You collected the money from your policy bets after you collected their actual bets?

A Yes.

Q At what time of day would you go about doing this?

A At night sometime.

Q At night sometime?

A Yes.

Q Who were your customers?

MR. LANNA: Objection, if your Honor please. I think he is going far afield.

THE COURT: I will sustain that objection.

You can ask him that before the grand jury.

Q Sir, when you were arrested, were you upset?

A Yes.

Q You were upset?

A Yes.

Q Did you start swearing?

A Yes, I think so.

Q Did you start hitting the car?

A I might have kicked the tire. I don't think I hit the car. I kicked the tire I think, once.

Q You kicked the tire?

A Yes.

Q Were you shown the policy work--

A No, sir.

Q That the policeman had seized?

A No, sir.

Q You weren't shown that?

A No, sir.

Q Tell me what the policeman did from--I withdraw the question.

You saw these policemen driving down the street, right?

A Yes, sir.

Q Your eyes met, right?

A Yes, sir.

Q Were you upset over having seen them?

A Yes.

Q Were you upset over the fact that they turned around and started to follow you?

A Yes.

Q So you went ahead and you started to go fast, is that right?

A Yes.

Q How fast were you travelling?

A I don't know, 40, 50 maybe, approximately.

MR. WALL: Your Honor, I just wanted to place on the record that I am leaving and that Mr. Lana will handle Mr. Frangello and Mr. Visconti and I will come back to get Mr. Friedman.

THE COURT: Are you going to be gone for the rest of the hearing?

MR. WALL: Just as long as it takes me to plead a man twice before two different judges.

I don't know how long that will take.

THE COURT: All right.

Q Now, sir, you threw this bag out the window, is that right?

A Yes, sir.

Q And after throwing the bag out the window you then proceeded at the high speed, is that right?

A Yes, I would say 50, 60 miles. I think the speed limit was 60, I was going about that, maybe a little faster.

Q The speed limit was 60 and you were going 60.

A About that.

Q Then when the policeman came up, what did they do, they turned on their siren?

A No.

Q They didn't turn on their siren?

A They pulled right up close to me and told me to pull over. I knew how they were.

Q You had seen them the day before?

A Yes.

Q What did you say?

A Nothing, I pulled over.

Q Okay.

You got out and what happened?

A I think they told me to put my hands on the car or something like that and then the trooper told me to get in my car, I think it was trooper Sarnowski got behind the driving wheel, he drove.

The other trooper got in his car and we drove to the Peekskill Barracks.

They told me in my car.

Q What about getting excited.

A Like I say, I kicked the car once, I think, and I cursed a few times.

THE COURT: There are substantial admissions. He swore and he kicked the tire.

Q What induced you to kick the car and to start swearing?

A I got mad because I was getting arrested.

Q That was it?

A Yes, sir.

THE COURT: Whatever its legal significance, the psychological significance is fairly clear.

Q Now, sir, you never made any statements regarding Mr. Politi, is that correct?

A No, sir.

Q You never made any statement indicating that Mr.--that you had asked anyone not to send you back down to the Peekskill area?

A No, sir.

Q Did you ever say anything relating to any superiors or accomplices you might have in the gambling operation?

A No, sir.

Q The policemen made absolutely not statements to you, is that right?

A Except the one about Mr. Philip Politi's heart, having a heart attack or a bad heart.

Q That was it?

A Yes.

Q But they told you to put your hands up also, right?

A On the car, I think they told me to put my hands on the car, the roof of the car.

Q Otherwise they were completely silent?

A As far as I can remember, yes.

MR. FRIEDMAN: No further questions

THE COURT: All right. Do you have anything further?

I have a message from the jury downstairs.

MR. LEIGHTON: I just have one or two questions.

xx REDIRECT EXAMINATION

BY MR. LEIGHTON:

Q The day before this arrest that we were just talking about, August 21--

A Yes, sir.

Q Mr. Boylen arrested you for the first time, did he at that time ask you any question about Politi?

A No, sir.

Q Did he at that time ask you if you knew which police officers were being paid off?

A No, sir.

Q Did he ask you at that time who was on the pad?

A No, sir.

MR. LEIGHTON: I have no further questions.

MR. FRIEDMAN: No questions.

THE COURT: All right, thank you, gentlemen. I have a couple of messages including a request for me to redefine reasonable doubt.

Will you please either stick right in the courtroom

or right outside so as soon as I come back we are ready to go.

(Short recess.)

MR. FRIEDMAN: We have solved the issue, your Honor.

Your Honor, the three matters which I would like to raise with the Court while defense counsel are here.

There are three witnesses who I have outside and they pertain to searches with search warrants of 199 South Street, Philip Politi's automobile in November of 1971 and the search of Arthur Frangello's house and person in November of 1971.

I do not believe that there are any papers before the Court which raise issues that would warrant a hearing with respect to those searches with search warrants and I would ask leave of the Court, unless anyone can present to the Court strong reasons why a hearing should be held, to send those witnesses back.

THE COURT: Mr. Wall.

MR. WALL: Your Honor, the only search that I was aware of at the time themotions were filed were the ones pursuant to the arrest upon the warrant. I believe Mr. Friedman is talking about a search, notice of which I received last week, I believe, by mail.

That is the explanation for why there are no papers.

I have had trouble reaching Mr. Frangello and I was advised yesterday as to the cause of my trouble.

Mr. Frangello is presently serving a term of six months in the County Jail in Goshen, New York, wherever Goshen may be.

I have not had an opportunity to see him. Had I known precisely where he was last week, I couldn't even have gone then since I have been in Court every day.

It seems to me we ought to take the testimony. I have got no way to rebut it and quite frankly in the absence of speaking to Mr. Frangello, no way of effective cross examination.

I certainly don't like to put it off, but I got rather short notice about it.

MR. FRIEDMAN: Your Honor, I see no problems with the search and a hearing would not be necessary as to this unless substantial issues were raised as to the actual search.

THE COURT: At the moment Mr. Wall is not in a position to state whether he raises an issue or not and as long as you have the witness on hand, why not take his testimony.

I hesitate to proliferate the record and to open up the situation any more than necessary. I think, Mr. Wall, I will decline to do that at this time and if you find a

grounds for moving to go into this search, I will just have to find a little time then to hear this witness.

MR. WALL: I probably am misunderstanding, your Honor. I was about to suggest that what we do since this witness will inevitably show up at trial is to postpone this. There may be no issue.

MR. FRIEDMAN: The fact is you can decide it on the papers without any hearing unless there is some irregularity which creates a real factual issue.

THE COURT: I think the changes are good that a hearing will not be necessary and I would rather not conduct one just to be careful.

MR. WALL: I will take a look at the papers and I will see whether I have an argument from the papers. If that is so, I can promise both of you that I will file papers and argue it.

MR. ANOLIK: I would like to know if it is alleged that anything was found in the cars?

MR. FRIEDMAN: Yes.

MR. ANOLIK: That is contrary--

THE COURT: Is this the first notice you have had of the search?

MR. ANOLIK: No, I had notice of my search but my client had indicated to me something to the contrary. We would

want to test it out.

MR. FRIEDMAN: Again, Mr. Anolik is free to test the papers on their face, but as to whether there is anything that merits an evidentiary hearing, I don't have any allegation on your part, nor have you filed papers, indicating anything that would merit an evidentiary hearing as to this search with the search warrant.

MR. ANOLIK: I did file papers, but my understanding was that nothing was found in the car and that is the reason from what my client told me.

THE COURT: I don't know how the Government can be bound by what your client told you. I am a little distressed that these questions are arising now because I thought we devised a procedure that all motions had to be made by a certain date and it would be a predicate, I suppose, except for good cause--

MR. ANOLIK: We don't need a hearing, your Honor.

THE COURT: That is the question.

MR. ANOLIK: I don't think we need a hearing.

THE COURT: Let's state that within two weeks from now any defense counsel who wishes to make further motions with regard to the searches of which they have been advised during the course of this proceeding or immediately prior thereto will do so.

MR. ANOLIK: Very well, your Honor.

THE COURT: All right.

Are we then ready to proceed on the warranted searches?

MR. LANNA: Yes, sir.

I would like to have Trooper Shaw, please.

THE COURT: Mr. Lanna, do you want to tell me as to which warrant this is?

MR. LANNA: This has to do with a warrant relative to the Bobin Inn Motel or Cabins which was executed and-- was signed and executed on January 26, of 1971.

MR. FRIEDMAN: Your Honor, Mr. Lanna spoke to me in the interim and he wanted to raise an issue with the Court and it is my understanding that he wished the Government to stipulate that a preliminary hearing with respect to this search the Government objected to the production of the search warrant and the Court sustained that and I said that I would object on the grounds that it is not probative, since an objection by counsel and a ruling by the Court is not probative as to whether a search warrant has been altered, but I would stipulate, if the Court ruled that it was probative, that that event did occur.

MR. LANNA: May I be heard, if your Honor please?

THE COURT: Yes.

MR. LANNA: On February 2nd, 1971, after some of

these defendants had been arrested in connection with the warrant, we are about to contest, there was a pre--they were charged with felonies, I might add, under the state law--and they were permitted to have a preliminary hearing in the Town Justice Court of Clarkstown before the Honorable Edward J. Flynn, Town Justice, at which time the people were represented by the District Attorney's Office of Rockland County.

At that time it was requested by me in behalf of defendants that a copy of the search warrant be exhibited and marked as an exhibit and to that the people objected and it was sustained despite rather lengthy argument.

I renewed that request at the end of the hearing for permission to examine the cause. Throughout the hearing I made it very clear that we requested the proper description as to where the search was to have been conducted.

I think it was obvious at the hearing and it was denied in any event.

Now, I feel it is probative so far as this issue is concerned before your Honor at this time, because I think that in that manner your Honor will have the advantage of the consistency or inconsistency of what occurred from the date of the issuance of this warrant.

The execution of the warrant, preliminary hearing which occurred some five or six days following its issuance and,

of course, the subsequent motions which were raised both in the County Court of Rockland and now in this proceeding as to whether or not we will sustain our burden of proof.

I think it is probative.

THE COURT: I have your view on the matter at the moment. When all the pieces get assembled, I think I will be able to tell better whether or not it is probative, but I understand your view.

MR. LANNA: I think perhaps we could agree as to which should be marked for identification.

THE COURT: That is fine, but I would like to look over the paper myself before the witness testifies.

Will you agree as to marking the paper for the purpose of it being an exhibit.

MR. FRIEDMAN: The Government would submit at this time the original affidavit and search warrant and would ask that it be marked into evidence as Government Exhibits 5 and 6 at this hearing.

The warrant is 5, the affidavit is 6.

xx (Government Exhibits 5 and 6 received in evidence.)

THE COURT: Mr. Lanna, you are going to be questioning Shaw, is it?

MR. LANNA: Yes, sir, initially.

THE COURT: Could I ask him the step immediately

outside the room for the moment and--

MR. LANNA: May I say this, Judge. I have one witness in the courtroom and I will exclude her. That is the expert.

Perhaps it might be wiser if she, too, stepped outside the room.

THE COURT: What I wanted you to do--is that the witness that just stood up?

MR.LANNA: Yes, Mrs. Titel, would you wait outside?

There is a witness room that you can show her to.

THE COURT: Would you be good enough to tell me what you claim to be the defect in the affidavit and what you are trying to bring out?

MR. LANNA: It is our contention that when this warrant was signed by Judge Rubenfeld it contained in the warrant, the first page of the warrant, the description "southeast corner."

If I can direct your Honor's attention towards the lower part of that page you will see where it now reads "northeast corner."

THE COURT: On the warrant itself?

MR. LANNA: Yes, sir, the first page.

THE COURT: Yes, I see it.

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MR. LANNA: Very well. Also on page 5 of the affidavit--

THE COURT: Yes.

MR. LANNA: Similarly you will find that the description is northeast corner.

THE COURT: I will take your word for it.

MR. LANNA: Those are the only two pages of those two exhibits which contain any description. It is our contention that in fact when it was signed it stated southeast corner. We can only speak now for the warrant, of course. The affidavit wasn't produced.

That subsequently these two pages were altered and I think that pretty much gives you the issue in a nutshell.

THE COURT: All right, will you call Mr. Shaw then?

R A Y M O N D S H A W, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. LANNA:

xx MR. LANNA: If your Honor please, under the authority of Chamberlain against North Carolina, recently decided, may I be permitted to examine Mr. Shaw? I won't call him as a hostile witness, but as a witness of the Court or certainly

not as my witness. I don't think I should be bound by the District rules or procedural rules in examining him.

THE COURT: You mean with regard to leading and so on?

MR. LANNA: Yes.

THE COURT: I would allow a certain amount of leading to get started on this.

I haven't studied Chamberlain. Why don't you examine him in the normal fashion and if I find any problems in getting the information, I will be flexible about the procedures.

MR. LANNA: Very well.

BY MR. LANNA:

Q Mr. Shaw, will you tell us your occupation, please?

A I am an investigator with the New York State Police.

Q For how long have you been so employed?

A 12 and a half years.

Q Four and a half years.

A 12 and a half years.

Q How long have you been an investigator?

A Three years.

Q Were you an investigator on January 26 of 1971?

A Yes.

Q You are familiar with Bobin Inn complex in Rockland

County?

A Yes.

Q Prior to January 26 of 1971, did you have any official connection with an arrest which was to take place on the evening of January 26, 1971?

A No.

Q On the evening of January 26, 1971, is it not a fact that you in the accompaniment of other police officers caused a raid on a certain cabin at the Bobin Inn?

A Yes.

Q Approximately how many law enforcement people were involved?

A Approximately ten.

Q Would you be kind enough to tell the Court what agencies were involved, if you can recall?

A The State Police, Westchester County District Attorney's Office. At this time I am not sure if anybody from the Rockland County District Attorney's Office was there or not. I don't know.

Q If you can tell us, would you have termed this a Westchester County District Attorney's Office raid and arrest?

A It was their investigation, yes.

Q It was their investigation?

A Their investigation.

Q They recruited your assistance over in Rockland County, is that correct?

A Recuirt, I don't know the word, but they asked us to come because it is in our jurisdiction.

Q At about what time of the evening was that?

A Approximately 6:30.

Q About 6:30 in the evening?

A Approximately.

Q Do you recall whether or not a search warrant was utilized?

A Yes.

THE COURT: There was a search warrant?

THE WITNESS: Yes, sir.

Q Did you have a copy of that search warrant?

A Yes, sir.

Q Did you have an opportunity to read that search warrant before you conducted the raid?

A Yes, sir.

Q As a result of having read that search warrant and having conducted the raid, would you tell us, if you can recall, what cabin did you enter?

A Number 24.

Q Number 24, okay.

After your entry into that cabin you had occasion

to see certain people who were arrested, right?

A Yes, sir.

Q One of those persons was an Anthony Politi, is that correct?

A Yes.

Q Just to expedite this, there was also a Philip Politi?

A Yes.

Q Michael Roman?

A Yes.

Q Both of whom are defendants here with Anthony Politi?

A Yes.

Q Pasquale Maselli?

A Yes.

Q And a youngster by the name of--

A Hanlan.

Q Raymond Hanlan, okay.

After you went to the premises, Tooper, you exhibited a copy of this warrant, did you not, to the defendants?

A Yes, sir.

Q Do you recall exhibiting a copy of this to Politi?

A Yes, sir.

Q Anthony Politi?

A Yes, sir.

Q Do you recall observing their reading this warrant?

A Yes, sir, I do.

Q Did there come a time when you took it back?

A Not at this particular time. I took it back at a later time.

Q Is it not a fact that they asked that they be permitted to keep a copy of the warrant?

A I don't recall.

Q You don't recall?

A I don't recall if they asked. I don't recall at that time. There was a lot of confusion at the time he had it. I really don't recall if he asked or not.

Q What you are saying is they may have, but you don't recall now?

A Right.

Q In fact, weren't there several copies amongst the raiding officers of this warrant?

A This I don't know. I presume that I had the original warrant for the premises. I don't know.

Q You don't know whether any others were there?

A I don't.

Q You told us that you read this warrant before you conducted the raid, right?

A Yes.

Q You told us you went into Cabin 24, right?

A Yes.

Q You found the defendants there, right?

A Yes.

Q Now, will you tell us where the warrant directed you? What was the location?

A After reviewing the warrant--

Q No--

A At that particular time, I don't recall. All I know is I was directed to go to a certain cabin, number 24.

Q I didn't ask you that. What did the warrant--what are you laughing about.

A I am not laughing. I am trying to get the question so I can answer it.

Q Where did this warrant direct you?

A To a cabin in the Bobin Inn.

Q To a cabin in the Bobin Inn.

A The northeast corner or whatever at the Bobin Inn.

Q Is that what you recall?

A At this particular time when I read the warrant, no, I don't.

I was directed to go to Cabin 24.

Q Let's go backwards now.

THE COURT: Let me ask a question.

We are talking about what you remember as of the date of the arrest, which was January 26, 1971. Are you saying that the warrant told you to go to Cabin 24 or that somebody?

THE WITNESS: Someone told me to go to Cabin 24.

THE COURT: The warrant used general terms, is that right?

THE WITNESS: Yes, sir.

Q What did the warrant say?

A To the northeast corner of the complex, the Bobin Inn, the complex.

Q That is what you remember, right?

A That is what it said.

Q Are your sure it didn't say the southeast corner?

A I don't recall it saying the southeast corner, no.

Q You are telling us that today you recall it said the northeast corner--

A Not at this particular time when I first got the warrant, I was directed to go to this cabin. I don't recall if it said the northeast corner the first time I read it before the raid. At a later time I read the warrant and it said the northeast corner, but at the time I first read it I don't recall if it said the northeast corner or 24 or whatever.

Q Or southeast corner?

A This is what I don't recall.

Q When did you read it again, do you remember that?

A I read it in its entirety at a preliminary hearing that was held in Rockland County.

THE COURT: How long after January 26 or was it on January 26?

A No, it was a preliminary hearing that brought this subject to light. I don't recall the date. Maybe a month later or something.

Q You are talking about when we had the preliminary hearing before Judge Flynn?

A Yes.

Q You are telling us now that you read it that day?

A I was given it. I believe that the same questions were asked and you showed it to me and asked me if this is what I saw that night of the raid, the northeast corner or whatever.

Q What did you say then?

A I believe in words that I just told you that I don't recall if it said northeast. It was Cabin 24 that I was directed to go to.

THE COURT: Let me see if I have your testimony straight. I understand you to be saying that as of this

time or even as of the time of the preliminary hearing you didn't remember whether the warrant said northeast or southeast; that you had outside the warrant been directed by some person to go to Cabin 24?

A That's right.

THE COURT: That is the reason why you didn't pay terribly great attention to whether the warrant said northeast or southeast but later on at the preliminary hearing you xeroed in on what the warrant said and you became aware of the fact that at that time it said the northeast, is that correct?

THE WITNESS: Yes, sir.

THE COURT: So you don't really know what it said on January 26, 1971?

THE WITNESS: Not that night, I don't, no, sir.

Q Trooper Shaw, you say you don't recall whether or not you were asked for a copy of it at the scene of the arrest?

A At this time I don't recall at the particular time when I handed the subject a copy of the warrant.

I don't recall if he had asked for one or not.

Q You do recall you didn't leave it with him?

A No, sir.

Q Following that you were taken to the trooper barracks,

were you not?

A Yes, sir.

Q Not you, excuse me, you took the defendants to the trooper barracks?

A Yes.

Q At the trooper barracks, do you recall conversation with these defendants in connection with the warrant against them?

A I believe Mr. Politi--

Q When you say Politi, you have to identify him.

A Anthony.

Q Okay.

A I believe he said something about, where is the warrant.

I said it is in with I believe the undercover the District Attorneys were there from Westchester and I wasn't at liberty to get it at that time because it was being prepared for return or whatever, and I did not have it in my possession and I wasn't in a capacity to go and take it and give them a copy at that time.

Q But he was inquired and was interested in that warrant, was he not?

A I believe yes, at the station, yes.

THE COURT: You in effect told him you couldn't

get it?

THE WITNESS: I says, it was used and there were other people with more authority like the Assistant D.A.'s and they had the warrant.

Q Trooper Shaw, may I direct your attention to the preliminary hearing conducted on February 2nd of 1971 in the Justice Court, Town of Clarkstown in the County of Rockland, which was some 5 or 6 days after this arrest of January 26; do you recall testifying?

A Yes, sir.

Q Do you recall I was the lawyer representing Mr. Politi at that time?

A Yes.

Q I asked you certain questions on cross examination, do you recall that?

A Yes, sir.

MR. LANNA: If your Honor please, may we have this marked for identification.

THE COURT: Surely.

MR. LANNA: This is an official transcript of that preliminary hearing.

THE COURT: All right, let's call that Anthony Politi Exhibit 1.

(Defendant Anthony Politi Exhibit 1 marked for identification.)

Q Do you recall being asked these questions and giving these answers at that hearing.

"Q. Now, you had a warrant, did you not?

"A. Yes, sir.

"Q. And where did that warrant direct you?

"A. To Cottage Number 24, of the Bobin Cottage Motel."

Incidentally, that is on page 28.

Do you recall being asked those questions and giving those answers?

A I don't recall the question or the answer at this time, but this is an official record and this will have to be my answer that I gave at that time.

Q Your answer was that the warrants directedyou to cottage number 24, at the Bobin Cottage Motel. Does that help refresh your recollection?

A Like I say--

THE COURT: I gather it is the normal situation where the witness cannot recall what he said, but he doesn't deny the transcript.

A This is the official transcript and I can't deny it.

THE COURT: You could if you are sure it was wrong, but you are not.

THE WITNESS: No.

Q Page 29. Do you recall being asked these questions and giving these answers:

"Q. Is that what the warrant said, cottage number 24?

"A. I believe so, yes, sir.

"Q. Well, did you actually have a copy of that warrant?

"A. Yes, I did.

"Q. Did you examine it?

"A. Yes, I did.

"Q. And it is your recollection that it directed you to Cottage Number 24?

"A. Yes, sir."

Do you recall being asked those questions and giving those answers?

A The same again. I cannot answer at this time. If that is the official record, that is the answer that I gave at that time.

MR. FRIEDMAN: Your Honor, at this time I would object to this line of questioning on the basis that it is totally irrelevant. This man has been called as a witness on behalf of the defendant. The cottage number 24 is located in the northeast corner of the Bobin Inn area so if the search warrant actually said, as defendant would contend by virtue

of calling this witness, I would assume if it said 24 rather than the northeast corner, that would mean that the warrant had not been altered from southeast to northeast at a time after the search, but in fact, that the search warrant was actually more particular and more correct than the defendant would actually allege, so I fail to see the relevance of this witness and I would object to it on the grounds that it is not probative.

THE COURT: What do you have to say, Mr. Lanna?

MR. LANNA: If your Honor please, I think it is extremely probative because if it said northeast corner, as it now says, despite the fact that cabin 24 might have been the cabin at the northeast corner, I think we are questioning the credibility of this officer.

He at the time of the preliminary hearing denied any geographical type description.

He said it was Cabin 24, which might have been what he considered to be the right answer to give.

THE COURT: I will consider it for purposes of credibility.

MR. LANNA: Thank you, sir.

Q Further on page 29.

Do you recall this question and this answer:

"Q. What other description did it give you, if

any?

"A. I don't recall."

Do you recall being asked that question and giving that answer?

A Again the answer--if this is the official record, I cannot recall from the answer. I will take this answer as official.

Q Page 32 of that transcript. Do you recall being asked these questions and giving these answers:

"Q. Mr. Shaw, Ibelieve you testified that you believe the warrant indicated room number 24; is that correct?

"A. Yes, sir.

"Q. Is it not a fact that you showed one or some of these defendants a copy of that warrant?

"A. That's right, sir.

"Q. And is it not a fact that that warrant read that you were directed to a cottage that was located on the southeast corner of the premises?

"A. Like I said, I was directed to the cottage by other people when I got there. I was directed to the cottage by other people.

"Q. Did you examine the warrant?

"A. Did I read the warrant?

"Q. Yes. Did it direct you to the southeast cottage?

"A. I don't recall the wording as far as the location of the cottage was concerned.

"Q. You don't recall whether it said that or not?

"A. I don't recall, no. At the motel after reading it, I was directed to the cottage to go to.

"Q. I see. Were you carrying the warrant?

"A. Yes.

"Q. Did you read it?

"A. Did I read the warrant? Yes.

"Q. Now, I ask you again: Did it say anything about the southeast cottage."

This was objected to.

Do you recall being asked those questions and giving those answers?

THE COURT: I take it your answer is the same?

THE WITNESS: The same, yes, sir.

Q Would you agree, Trooper Shaw, that your recollection on February 2nd of 1971, a few days after this search was better than your recollection would be today some two years plus?

A I think the answers would be the same as far as how I got into that particular cabin.

Q How about your statement that it was Cabin Number 24 that the warrant directed you to?

MR. FRIEDMAN: I would concede in the course of human existence that one's recollection tends to be within a week of an event rather than within two and a half years, your Honor.

THE COURT: Okay. With that big concession, Mr. Lanna, you may go on.

Q You also told us earlier this morning that at that preliminary hearing you read the warrant, right?

A Yes, you gave it to me.

Q I gave it to you?

A I believe you handed it to me at that time.

Q If I were to tell you I didn't hand it to you because it wasn't given to me, would that refresh or change your answer?

A No, I read it at that particular time.

Q You read it--someone gave it to you?

A It said at that particular time the northeast corner. I remember that specifically because it was an issue at that time.

Q That is very clear in your mind?

A It was an issue, yes, sir.

Q Why didn't you tell us that when I was asking you

all of those questions.

A In the preliminary hearing?

Q Yes.

A During the preliminary hearing?

Because the answer that I gave that I was directed to go to Cabin 24 and I did not remember if it was the northeast or the southeast corner at that time. I was directed when we got to the Bobin Inn complex, I was told to go to Cabin 24, this is the one where the search warrant was for?

Q Didn't you just tell us that you read the warrant because of the issue which I was creating that day?

A Yes.

Q Isn't that what you just told us?

A Yes.

Q After you read it, I asked you these questions, did I not?

A Yes.

Q When I asked you what description the warrant gave and I asked you if you had read it, you said it was Cabin Number 24, isn't that what you told us?

THE COURT: Your question is based on an assumption which I don't know is in the evidence yet that he read this warrant before you asked your questions and it is unclear to me when he read this warrant on that day.

If he read it that day beforehand and two minutes later said something inconsistent with it, that is a little surprising and it is not clear to me that there is any evidence that indicates that he read it beforehand.

Do you remember when you read it?

A No, because if I read it beforehand I would have known it was the northeast corner instead of building 24.

THE COURT: You can reson like I do, but I am asking you if you remember?

THE WITNESS: No, I don't, sir.

Q Is it now your testimony that you don't recall when you read it?

A Before hand, I believe at the time of the preliminary hearing that I was handed the warrant to read after the issue was brought up about number 24 and I read the warrant at that particular time during testimony by you or by the District Attorney.

I read it during the preliminary hearing.

THE COURT: He didn't testify, did he?

THE WITNESS: No, I read it while I was testifying either by you or the District Attorney showing it was the northeast corner at that time?

Q This was while I was examining you?

A I say I am not sure. It was either you or the

District Attorney during the testimony that I gave. The issue as far as the cabin or the northeast corner.

Q You knew it before we finished that day?

A Yes, this is how I got the answer because I looked at the warrant during the testimony.

MR. LANNA: Page 35, if your Honor please.

Q Redirect examination by Mr. Cohn, who happened to be the Assistant District Attorney.

"When was the last time you saw that warrant?

"A. Pardon?

"Q. When was the last time you saw that warrant?

"A. The last time I read it in its entirety?

"Q. Yes.

"A. (No response.)

"Q. Have you read it since January 26?

"A. I don't believe so, no."

The people rest.

"Mr. Lanna: The defendant rests."

Do you recall being asked those questions and giving those answers?

A Again the same answer.

THE COURT: The same answer.

Q Isn't it so that you didn't read this warrant during the course of that hearing at any time?

THE COURT: Apparently up to the time of that question, I think that would be a fairer question to ask.

A Up until that question?

THE COURT: Does that refresh your recollection that you hadn't read the warrant between January 26 and the time that the District Attorney asked you that question?

THE WITNESS: Again the answer that I gave there would have to be--

THE COURT: Now, we are asking you something else. Not whether that answer was correct.

We are asking you having heard that answer, does that refresh your recollection that between January 26, 1971 and the time that the District Attorney asked you that question you had not read the warrant?

THE WITNESS: No.

THE COURT: All right. If you want to ask him if he remembers reading it after that, you may.

Q Wasn't it your testimony just a few moments ago that you were given this warrant while we got into the issues as to what its description was?

A Like I said, during the time I was in testimony at the preliminary hearing, the issue was the cabin 24, which I answered to you that I was directed to go to and sometime

during that hearing I read the warrant and stated the northeast corner, the cabin located in the northeast corner.

MR. LANNA: Excuse me, would you read that back for me.

(Question read.)

Q Sometime during the yearing?

A I believe so, yes, like I stated before. I believe so.

Q You just heard me read to you the last question and answer of that hearing in which Mr. Cohn, the Assistant District Attorney, asked you when you last read that warrant. You said January 26.

A It could have been after that question. After that question that Mr. Cohn asked me, I don't recall.

Q What you are telling this Court now, after having heard all of the testimony I have given you from that hearing, is that now you probably read it after I was gone and after your testimony regardless of your inability at that time to indicate that there was a northeast legend in that warrant, is that what you are telling us?

MR. FRIEDMAN: I object. It is argumentative and conclusory.

THE COURT: I would like to know what Mr. Shaw thinks happened. That is the best we can get out of him,

I think. When do you think you read it?

A Sometime during the day of the preliminary hearing.

THE COURT: You heard yourself say in the transcript that you didn't read it before the questioning was over because that is what your testimony on the transcript shows?

THE WITNESS: I read it sometime during. The answer that I gave, it had to be after or during the day of the testimony. Probably after because of the answers that I gave.

MR. LANNA: May I offer this transcript into evidence, if your Honor please.

THE COURT: Yes.

MR. LANNA: You have no objection, Mr. Friedman.

MR. FRIEDMAN: No objection.

(Defendant Anthony Politi Exhibit A received in evidence.)

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MR. LANNA: Excuse me for a moment, sir

(Pause.)

MR. LANNA: Do we have the original of the warrant?

MR. FRIEDMAN: Yes, it is right there.

Q Trooper Shaw, I show you the original -- well, Government's Exhibit 5 for identification and Government's Exhibit 6 for identification and I ask you if you recognize those instruments.

A This is the warrant that was put in as evidence.

THE COURT: Which exhibit is that?

THE WITNESS: No. 5.

MR. LANNA: 5 is the warrant.

A No. 6, I never read that before.

Q Very well. I will direct your attention to 5. That is the warrant, is it not, 5 for identification?

A Yes, sir.

Q Is that warrant -- would you please take a look at it and read it.

THE COURT: The warrant?

MR. LANNA: Yes, your Honor.

THE COURT: All right?

THE WITNESS: Yes, sir.

THE COURT: Okay, Mr. Lanna.

BY MR. LANNA:

Q Is that the warrant as you recall that directed you on January 26th of 1971?

A If that is the original warrant I would say this is the warrant.

Q What you are saying then is you cannot really say --

A Not this particular piece of paper. There were several copies made, but if this is the original warrant and it was given to me, I had that in my possession on the 26th of January.

MR. LANNA: May I offer this into evidence, if your Honor please.

MR. FRIEDMAN: No objections.

THE COURT: Are you saying you can't be sure whether that is the original but that you were either given that piece of paper or an identical copy of it?

THE WITNESS: Yes, if this is the warrant for that particular affidavit.

(Government's Exhibits 5 and 6 were received in evidence.)

THE COURT: Mr. Anolik.

MR. ANOLIK: Your Honor, I might point out

that I have never received a return on the search of Phil Politi. That is the reason I was not aware of anything that was obtained. But Mr. Reutter very kindly said that inadvertently it was not given to me and he would arrange to get it to me.

I just wanted to establish the context of the situation.

DIRECT EXAMINATION

BY MR. ANOLIK:

Q Can you tell me, Mr. Shaw, whether or not on that date of the search you also searched any cars?

A I didn't, no, sir.

Q Do you know if any cars were searched?

A I don't recall -- I don't know.

Q Did you ever search the car of Philip Politi at any time?

A No, sir, I never did.

Q Do you know of your own knowledge or through information received from official channels whether any sort of electronic surveillance was used in connection with this investigation?

A I don't know.

Q Are you saying it did not or you don't know?

A I don't know.

THE COURT: He says he doesn't know.

BY MR. ANOLIK:

Q Now, you went to this location, the Bobin Inn. How many cabins are there in that area?

A I don't know.

Q Would you say there are at least 24 cabins?

A I don't know.

Q How many cabins do youestimate? More than two?

A I believe I was there on other investigations and there are buildings with two families and three families, I believe, and they start from 1, 2, 3 and they are all different numbers. They are not in any sequence going around the complex or whatever.

THE COURT: How many buildings did you see?

THE WITNESS: Approximately 25, 30. Approximately.

THE COURT: These are different buildings?

THE WITNESS: Different buildings in the particular complex. Again I would just say approximately 25 to 30.

BY MR. ANOLIK:

Q Would they be of different sizes as well?

A Yes.

Q Would they be multi-family dwellings, some of them?

A Some of them are, yes.

Q Are some of them located in the northeast section of this area and some in the southeastern section and some east and some west?

A Yes.

Q So the generic description northeast corner might encompass more than one building, isn't that true?

A Well, in a general area, yes. If it is the general area northeast, yes.

Q However, you say that when you went on this search that day you were told to go specifically to cabin 24, is that it?

A Yes, sir.

Q Do you remember who told you that?

A No, I don't recall. They just pointed out the cabin to go into.

Q Were there other officers there before you got there?

A As far as I know, no. I came with other people and we all came at one time.

Q Is it your testimony, then, that someone other

than a police officer or public official told you to go there?

A No, we were all police officers that were there.

Q I am just trying to find out who told you to go to cabin 24. Was it a civilian?

A No, no. Whoever was with me. We were all together, we were all police officers, either from the State Police or from the Westchester District Attorney's office, and I was directed by one of these people to go to this particular cabin.

Q But the fact is that you all arrived together, simultaneously?

A The people I was with, yes.

Q So far as you know, there were no public officials or police officers there before you got there?

A What do you mean,at the cabin?

Q Yes.

A Not that I know of, no, sir.

Q Did you announce your presence or did you just barge in.

A We just broke the door down. We hit the door and tried to open it and it wouldn't open so we had to break it.

Q Do you know how many families occupied that cabin?

A How many occupied it?

Q Yes.

A No.

Q Is it a multi-dwelling?

A No, it's a small cabin consisting of four small rooms.

Q Four small rooms. Are these in the nature of motel rooms?

A No, they are cabins. They are cabin type.

Q Would this be for one person or might more than one person --

A A family could live there.

Q Can you tell me whether or not you had ever been in that particular cabin before?

A No, I hadn't.

Q You had not?

A No, sir.

Q Was this particular cabin staked out in advance at any particular time as far as you know?

A As far as I know at that time?

Q Yes.

A No, I don't know.

Q Can you tell me whether or not you were present when the search warrant was obtained?

A No, I wasn't.

Q Were you present when any affidavits were drawn?

A No, I wasn't.

Q Can you tell me whether or not anybody who made an affidavit in connection with obtaining the search warrant was with you

A Was with me at that time?

Q Yes.

A I believe he was, yes, sir.

Q Who would that be?

A I believe it is Investigator Parkhurst.

Q Is he with the State Police?

A He is with the Westchester District Attorney's office.

Q You are with the State Police, is that correct?

A Yes, sir.

THE COURT: He was with you on the raid?

A The question was, he made the application?

Q He made the application, is that correct?

THE COURT: I thought you asked whether

anybody who supported the application one way or another was with him on the raid.

MR. ANOLIK: Yes.

A I believe he was with me at the time.

Q Parkhurst was with you on the raid, is that correct?

A I believe so. I didn't know him at the time so I couldn't say, but I know that seeing him again, I know that he was.

THE COURT: All right.

BY MR. ANOLIK:

Q Can you tell me whether anybody else was present who may have obtained information? Aside from Mr. Parkhurst, was there another officer who gave information, a Mr. Daniel Reedy of the State Police, was he present?

A No.

Q He was not present?

A I don't believe so.

Wait a minute. Dan Reedy from the State Police?

Q Yes.

A I don't recall.

Q He might have been there.

A He might have been, I don't recall.

THE COURT: Reidy?

THE WITNESS: Reidy.

Q At the time that you entered the premises, can you tell me who was inside the premises?

A Michael Roman, Anthony Politi, Maselli, Pat Maselli.

MR. LANNA: And Philip Politi. There were five subjects inside.

Q Did you know those people?

A Michael Roman I did, and from pictures I had seen of the other people, I knew them also.

Q Can you tell me whether or not you personally carried a copy of the search warrant with you?

A Yes, sir, I did.

Q After you entered did you immediately announce who you were?

A Yes, sir.

Q Who did you say?

A State Police.

Q Did you say that this is a search or what?

A I said, "State Police; nobody move."

Q You didn't say you were there on a search?

A I had the search warrant in my hand. I said,

"State Police; nobody move." I had the search warrant in my hand, and as soon as everybody was in and the people were all in one room, Mr. Politi asked me for the search warrant so he could read it.

Q Did you ever say, "State Police; I have a search warrant to search these premises"?

A Yes. "State Police; nobody move. I have a search warrant."

In essence, I don't know if this is the way I said it, "I have a search warrant," but I said, "State Police; nobody move. I have a search warrant."

Q Did you show that search warrant to anybody?

A Mr. Politi.

Q Mr. Anthony Politi?

A Yes, sir.

Q Do you know if he looked at it?

A Yes, sir, he read it.

Q You were shown the search warrant by Mr. Lanna before, and is it your testimony that this search warrant is in the exact same condition now as it was when you showed it to Mr. Politi?

A As far as I know, it is.

Q As far as you know, it is?

A Yes.

Q Can you tell me, if you know, whether any alterations were made in that search warrant between the time you showed it to Mr. Anthony Polity and the present day?

A I couldn't answer that.

Q Who had the custody of it?

A The custody of the search warrant?

Q Yes.

A I had the search warrant when we entered the premises.

Q Afterwards, between that day and today?

THE COURT: Do you know?

A A return was made to the Westchester District Attorney's office. I made the return on the search warrant.

Q Do you have a copy of the return?

A Probably with our report we would.

MR. ANOLIK: Is there a copy of the return here? I would like to see it if there is one, your Honor. I think it is required.

THE COURT: You are entitled to it, I suppose you are, but I am waiting for counsel to say whether they have it or not.

MR. FRIEDMAN: Your Honor --

THE COURT: Do you have it?

MR. FRIEDMAN: There were certain returns that I turned over to defense counsel.

MR. ANOLIK: I never got one.

MR. FRIEDMAN: If not, your Honor, I will furnish it to defense counsel.

THE COURT: Do you want it now?

MR. ANOLIK: No, your Honor, I would like to know what was taken, your Honor.

THE COURT: I know that.

MR. ANOLIK: No, I can continue with the hearing.

MR. FRIEDMAN: I have consented to turn over returns on all the warrants, and I have turned them over as to almost all the warrants.

THE COURT: Very good.

MR. ANOLIK: That is fine.

BY MR. ANOLIK:

Q Can you tell me, if you know, where this was typed?

THE COURT: The warrant, you are referring to?

Q The warrant, yes.

A No, I don't know.

Q Referring to 5 and 6 in evidence.

A The warrant, I don't know.

Q Have you ever obtained a search warrant yourself?

A Yes, sir.

Q From the Westchester District Attorney's office?

A No, I haven't.

Q Where are you stationed?

A Stony Point.

Q You are in Rockland County?

A Yes.

MR. ANOLIK: I have no further questions at this time, your Honor.

THE COURT: Anybody else who wants to question?

MR. FRIEDMAN: I would like to.

THE COURT: All right, Mr. Friedman.

CROSS EXAMINATION

BY MR. FRIEDMAN:

Q Sir, you testified that you were directed to cabin No. 24 by someone, is that correct?

A Yes, sir.

Q Did the person who directed you to cabin 24

specifically state, "Go to cabin 24," or did he direct you to a cabin and you saw that it was cabin 24?

A I believe he pointed out the cabin, it was No. 24 was written, it is in numbers over the top of the door; it was No. 24.

Q Do you recall whether or not the person actually stated to you the words "cabin 24"?

A I don't recall.

Q Now, sir, the search warrant you had was a no-knock search warrant, is that correct?

A Yes, sir.

THE COURT: Will you talk loud enough so we can all hear you, Mr. Shaw.

THE WITNESS: Yes, sir.

Q Additionally with respect to this investigation, when did youfirst become involved with this actual investigation?

A On the Bobin Inn in particular?

Q Yes, sir.

A Approximately 4 o'clock in the afternoon on the 26th of January.

Q Was that the first time you ever heard about it?

A Yes, sir.

Q You did not draft the search warrant, is that correct?

A No, sir.

Q You did not participate in any surveillances with respect to the search warrant, is that correct?

A No, sir.

Q The sole involvement that you had is that you were handed a search warrant and you participated in entering that cabin and actually conducted a search of the cabin, is that correct?

A Yes.

Q Someone handed you this piece of paper, which was a search warrant, you read it and you held it in your hand as you entered, is that correct?

A Yes. As I entered, no, I had it in my pocket, because I had to force the door. As soon as we were inside the door I had it in my pocket and I took it out.

Q The primary people in charge of the investigation were the Westchester County District Attorney's office, is that correct?

A As far as I know, yes.

Q Mr. Parkhurst is an investigator for the District Attorney's office, is that correct?

A Yes, sir.

MR. FRIEDMAN: No further questions.

MR. LANNA: No further questions.

THE COURT: Thank you, Mr. Shaw

(Witness excused.)

MR. LANNA: May we have Investigator Parkhurst, please?

R O B E R T P A R K H U R S T, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LANNA:

Q Mr. Parkhurst, by whom are you employed?

A The Westchester County District Attorney.

Q In what capacity?

A Investigator.

Q Were you employed in that capacity in January of 1971?

A Yes, sir, I was.

Q Is it not a fact, sir, that on February 1st of 1972 you testified at a suppression hearing in the County Court of Rockland County?

A Yes, sir, I did.

Q Mr. Parkhurst, you recall the raid on the

Bobin Inn motels or cabins on January 26, 1971, do you not?

A Yes, sir.

Q You were one of the raiding party, were you not?

A Yes, I participated in it.

Q You represented, you might say, the District Attorney's office of Westchester County, so far as that raid?

A I was one of the investigators on it.

Q As best you recall, how many copies of the search warrant were available amongst the raiding party that evening?

A Five, six.

Q Is it not the custom in Westchester County, when there is a raid, when there is an arrest, when there are copies available, that copies be left with the defendant?

A To my personal knowledge, I don't know, sir.

Q You don't know?

You said that you recalled testifying at this hearing on February 1st of 1972, do you not?

A Yes, sir.

Q In the County Court of Rockland County.

THE COURT: He said yes.

Q At that hearing do you recall being questioned by myself?

A Yes, sir, I do.

MR. LANNA: May we have the official transcript of that hearing marked as a defendants' exhibit for identification, please.

THE COURT: All right.

(Defendants' Exhibit B was marked for identification.)

BY MR. LANNA:

Q You recall being examined by myself in that proceeding on February 1st of 1972?

A Yes, sir.

Q Referring you now to page 26 of Defendants' Exhibit B for identification, do you recall being asked this question and giving this answer:

"Q In these gambling arrests, isn't it the custom that you give the people who are arrested a copy of the warrant?

"A Yes, sir"?

Do you recall that question and that answer?

A Yes, sir.

Q Does that help refresh your recollection as

to what the custom is in Westchester County?

A Yes, sir.

Q Would that cause you to change your answer that you just gave, that you don't recall what the custom is?

A You asked if I gave them a copy.

Q I am sorry. Perhaps you misunderstood me then.

THE COURT: All we want to know how, is there any doubt in your mind that it is a custom where there are enough copies around to give copies to a defendant.

A They are shown the copies.

THE COURT: Shown and not given, is that what you are saying?

THE WITNESS: Myself, personally, I do not give them myself.

THE COURT: We are not asking you whether you personally give them. We ask you whether you know whether there is a custom.

THE WITNESS: To show them, yes, there is.

THE COURT: To show them.

BY MR. LANNA:

Q You heard me read that question and answer that

you gave in Rockland County a year ago. Do you recall being asked that question and giving thst answer?

A Yes, sir, I do.

Q Was it a truthful answer?

A Yes, sir, to the best of my recollection.

Q Which answer is the truthful one, that one or the one you just gave here today?

THE COURT: Let's aay which answer is the accurate one.

Q Which one is the accurate one? Okay. The judge is very kind.

THE COURT: We want to know whether the custom is to give or to show. Apparently in Rockland County you said "give." Is that correct?

MR. LANNA: He said "give."

I will repeat it:

"Q Isn't it the custom that you give the people who are arrested a copy of the warrant?

"A Yes, sir."

THE COURT: All right.

A I would say that is the right answer.

Q What?

A The Rockland County is right.

Q Isn't that so?

A Yes.

Q I have known you too long. That is the correct answer, isn't it?

A Yes.

MR. LANNA: I have no further questions.

DIRECT EXAMINATION

BY MR. ANOLIK:

Q Mr. Parkhurst, can you tell me whether or not you conducted any search of a vehicle operated by or owned by Phil Politi?

A No, sir, I did not.

Q Can you tell me whether or not you helped prepare the search warrants in this case?

A Yes, sir.

MR. FRIEDMAN: Which case?

MR. ANOLIK: I will show them.

MR. FRIEDMAN: The Bobin Inn search warrants or the Philip Politi search warrants? I will concede the Bobin Inn.

MR. ANOLIK: The Bobin Inn is what we are referring to now.

THE COURT: I thought we all understood that.

The answer is yes?

THE WITNESS: Yes, sir.

Q Can you tell me if you know who typed them?

A No, sir, I do not.

Q Were you present when they were typed?

A No, sir.

Q Did you dictate them?

A No, sir, I did not.

Q Do you know whether or not there were any warrants or orders obtained for electronic surveillance in connection with this case?

A No, sir, I do not know.

Q You do not know?

A No, sir.

Q Can you tell me whether or not there were any search warrants issued that were not executed in connection with this case?

A I am sorry. Could you repeat that, please?

Q Tell me whether there any search warrants issued that were not executed in connection with this case?

A The warrants that were issued were executed.

Q Every one of them?

A There was only one warrant.

Q Only one warrant. You are talking of the

Bobin Inn, is that right?

A The Bobin Inn, which included Phil Politi and his vehicle.

Q Were any changes ever made in that warrant so far as you know?

A No, sir.

Q Any mistakes made on it so far as you know?

A No, sir.

Q Did you read it before it was executed?

A I did.

MR. ANOLIK: I have no further questions.

THE COURT: All right.

Mr. Friedman.

MR. FRIEDMAN: Your Honor, shall I go into his rebuttal testimony of what I anticipate they are going to bring up or shall I recall him?

THE COURT: I think recalling him is a better idea. It is confusing when we deal with several issues at the same time.

CROSS EXAMINATION

BY MR. FRIEDMAN:

Q With respect -- I am just going to respond to prior examination -- with respect to this search warrant and the affidavit as to whether there were any errors or

corrections in it, do you know whether there was more than one draft, original drafts --

MR. FRIEDMAN: I withdraw the question.

Q Was there a draft of this search warrant, a correction of the draft, and then the actual preparation of the search warrant and affidavit?

MR. LANNA: Objection to the form, if your Honor please.

THE COURT: It is a little complicated, but can you give us the history of preparing a warrant.

A There was a draft made and then corrections were made on the draft, and then the original --

THE COURT: Actually, we are talking about two different things, or we may be. Are you talking about a draft of the affidavit or a draft of the warrant or both?

THE WITNESS: A draft of the affidavit.

MR. FRIEDMAN: No further questions, your Honor. The witness will come back later.

THE COURT: I understand.

MR. FRIEDMAN: Thank you.

(Witness excused.)

THE COURT: All right.

MR. LANNA: Anthony Politi, sir.

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ANTHONY F. POLITI, SR., a defendant herein, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LANNA:

Q Mr. Politi, you recall the evening of January 26th of 1971, do you not?

A Yes, sir.

Q Do you recall being arrested in the cabin at the Bobin Inn motel or cabins?

A Yes, sir.

Q Do you recall approximately at what time this was?

A I would say approximately in the area between a quarter of 7, 7 o'clock, something like that.

Q In the evening?

A Yes, sir.

Q As best you can recall, how many officers were involved in this raid and subsequent arrest?

A As best as I could recall, I would say there were better than 10 or 12 officers involved in the raid.

Q Would you tell his Honor the manner in which they entered the premises?

A Well, the only way I could explain it is

that there was a loud crashing sound, the whole door came crumbling down, and I believe it was Officer Shaw and three other officers were carrying a long ram. It was a brass object about maybe six feet long.

THE COURT: Were they dressed in armor?

THE WITNESS: No. They had on regular civilian clothes, but it was a ram type of an instrument they used to crash into the cabin.

BY MR. LANNA:

Q After they got in there there came a time when you were placed under arrest, isn't that so?

A After they got in there I would say they were pushing us around and they told us to stand in the back of the room behind the back wall. That was myself, Mr. Roman, Mr. Maselli, Ray Hanlan, I believe his name is, and Philip Politi, my brother.

At that point they told us that we were under arrest and not to move.

Q Did there come a time when one of the officers exhibited a search warrant to you?

A We were seated down. They told us to sit down while they were going through the cabin on a search, a routine search, and myself, Mr. Roman and Mr. Maselli were sitting at a table --

Q Will you tell your positions when you say sitting at a table, would you explain that to the judge?

A Your Honor, it was a table, I would imagine, maybe six feet or five feet long and approximately maybe three feet wide where they put three chairs there and told myself, Mr. Roman and Mr. Maselli to be seated.

Q Will you tell him how you were seated, in what position?

A I was seated in the middle, Mr. Maselli was seated to my left and Mr. Roman was seated to my right.

Q What, if anything, occurred relative to the warrant? I am interested in the warrant.

A At that point to Mr. Shaw, Trooper Shaw.

Q Is that the person who was on the stand earlier this morning?

A Yes, this was the gentleman that was on before Mr. Parkhurst.

Q Go ahead.

A I said to Mr. Shaw, I said, "Mr. Shaw, do you have a search warrant?"

He said, "Yes."

I says, "May I read it?" and with that he handed me a search warrant, which I placed on the table in front of myself and proceeded to read the warrant.

Q What, if anything, took place following your reading of that warrant?

A In reading the warrant I was basically concerned, as a matter of fact, if my name was in the warrant. In reading the warrant I see Philip Politi's name mentioned, and something to do with a 1966 Jeep.

As I continued to read the warrant I noticed that it stated the southeast corner of, I believe, the Bobin Inn cottage located in Rockland County.

Q As a result of that, what, if anything, did you do or say?

A At this point I turned to Mr. Roman, who I know is familiar with Rockland County because he lives there, and I said, "Mike," I said, "Mike, this says southeast corner."

Mike says, "What?"

I says, "This warrant says southeast corner."

He said, "Let me see it." With that he leaned forward and read the part about the description where it says southeast corner.

He says, "Tony, this is the northeast corner."

With that Mr. Maselli stretched over and he started to read it, and he bursted out loud that this is not the southeast corner, it's the northeast corner.

Q As you were talking and discussing this southeast and northeast corner phase of the warrant, what were the officers doing, if anything?

A There were three or four officers standing behind me and at that point Mr. Shaw stretched over my shoulder and pulled the warrant away from me.

Q What, if anything, did he say and what, if anything, did you say?

A I stood up at that point and I says, "I believe I am entitled or we are entitled to a copy of this warrant."

He at this point put the warrant in his pocket and says that when we get back to the barracks we would get a copy of the warrant.

Q Did there come a time when you left the premises and were taken to the barrakcs?

A I would say we were there approximately 40 minutes to an hour. We were handcuffed and put in a car and taken to the Stony barracks located in Stony Point.

Q That is the State Police barracks?

A Yes, sir.

Q Once you arrived at the barracks did there ever come a time when you discussed this warrant again?

A At the time that we were in the barracks

Maselli, Mr. Roman and myself, Mr. Politi, my brother, and the young fellow, Ray Hanlan, were placed in a fairly large room, seated around a big wooden table. I guess it must have been their conference room or something.

At this point again I spoke to Mr. Roman and Mr. Maselli, and Mr. Roman and Mr. Maselli says, "Get a copy of the warrant," that it's very important we have a copy of the warrant.

At that point I approached Mr. Shaw. I said, "Mr. Shaw," I said, "you told me when we got back to the barracks you would give me a copy of the warrant." I said, "I would appreciate if I could have one now."

At this point he told me, he says, "Tony," he said, "this is not a raid made by the Rockland County State Barracks, it was initially from Westchester, and you would have to speak to someone in charge from Westchester."

I said, "Well, who do I speak to? I believe I am entitled to a copy of this warrant."

He said, "You would have to speak to a Mr. McKenna."

I said at this point, "Is Mr. McKenna here?" and he said, "Yes."

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Q Did you know who Mr. McKenna was?

A Yes, I did.

Q Who is he or who was he?

A Well, I don't know his --

Q You know who he works for?

A Yes, he works for the District Attorney's office, and I believe he is in charge of the New York Strike Force, or something to that effect.

Q He is with the Westchester County district attorney?

A Yes.

Q Okay.

Tell us what happened.

A At this point I approached Mr. McKenna. I said, "Mr. McKenna, I spoke to Mr. Shaw, and Mr. Shaw told me that I would have to see you to get a copy of the warrant," and with this he looked at me and he said -- well, I guess you would call it very profane words, he used profane language; in other words, I wasn't getting a copy of this warrant.

THE COURT: Can you remember his words?

THE WITNESS: Yes, I can, sir.

THE COURT: Tell me what he said.

THE WITNESS: Your Honor, I feel --

BY MR. LANNA:

Q No, tell him.

A There is one young lady in the courtroom.

THE COURT: She can leave, if she wants; or she can stay, if she wants.

A He told me to go fuck myself.

Q Now, did you ever have any further discussions relative to obtaining a copy of this warrant?

A This was a steady thing with me, and Mr. Maselli made a request for it. Basically, all evening that we were in that barracks we were insisting on a copy of the warrant, and they just wouldn't give it to us.

Q Did you remain in jail overnight?

A We were taken to, I believe, another building, which I guess was a justice of the peace's, you know, building, where the justice of the peace -- I believe his name was Flynn, and this was maybe one o'clock in the morning and I know it was quite late.

At that time I would say Mr. Shaw, Mr. Purcell, Mr. Youngblood and, I believe -- I wouldn't swear to it -- but one other representative of the Westchester law-enforcement agency went into a room with Mr. Flynn and had quite a long conference.

Q That is Judge Flynn you are talking about?

A Yes, Judge Flynn.

We were placed at a bench in front of, I guess, something like this, his place where he stays, and again I made an attempt to receive a copy of this warrant.

THE COURT: What did you do?

THE WITNESS: At this point we were handcuffed and they took the handcuffs off us. At this point again I believe I spoke to -- Yes, it was Mr. Shaw. I said, "Mr. Shaw," I said, "You told me to speak to Mr. McKenna, and Mr. McKenna told me to go" -- you know -- "myself," and I says, "I would like to have a copy of the warrant.

He says, "There's nothing I can do for you. I can't give it to you."

At that time they went again in the room and they were in a huddle for quite a length of time and they spoke by themselves in the corner of this courtroom, and the next thing I knew we were posted under bond and incarcerated in the jail.

Q Mr. Politi, when did you first bring this warrant matter to my attention, as best you recall?

A I tried to get you on the phone because I knew this was of great importance, and I believe the first contact I had with you was immediately the next day and

I brought this to your attention that they had southeast corner, and Mr. Roman and Mr. Maselli, which I am not that great on the geographical location, please believe me, that it was the northeast corner.

MR. LANNA: May I have a moment, if your Honor please?

THE COURT: Yes.

I would like to ask Mr. Politi: did you bring your problem to Judge Flynn's attention that night?

THE WITNESS: Your Honor, the only way I could answer this to youin all honesty was that I hate to say something like this, but that night we were treated very hostile and we were talking to Judge Flynn in reference to the way we were arrested and the way he was posting bond.

We wanted to call a bondsman. We were denied our right to call a bondsman, and he posted, I believe it was, a large -- if I am not mistaken it was either $5000 or $10,000 bail, and he remanded us to jail that night.

THE COURT: I take it your answer is no, you didn't ask him, and the reason you are telling me is that you didn't think he was accessible?

THE WITNESS: Yes. Please believe me, I

thought that it was nothing that at that time he would have done for me.

BY MR. LANNA:

Q Mr. Politi, I show you Joint Exhibit 5 and ask if you recognize that exhibit. Just yes or no.

A Yes. I would say this is a copy of a search warrant.

Q Of a search warrant?

A Right.

Q Read through it.

A I would say --

Q I will ask you a question.

Is that a copy of the search warrant which was shown to you on the evening of January 26, 1971 by Trooper Shaw?

A No, sir.

Q As best you recall, what is the difference between this one and the one you saw on that evening?

THE COURT: Don't I know the answer?

MR. LANNA: I think you do, sir, really.

A The difference here on the first page is the northeast corner. When I read it it was southeast.

THE COURT: Do you see any other difference? I am not suggesting that there is or there isn't. I just

want to know if you do see any other difference?

THE WITNESS: No, sir.

MR. LANNA: I have no further questions of this witness.

THE COURT: Gentlemen, sorry to keep anybody waiting, but I will have to get back to that jury because it is lunchtime.

I will join you here againat at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

THE COURT: I think Mr. Politi was on the stand, was he not?

Resume the stand, please.

A N T H O N Y F. P O L I T I, S R.,

resumed.

THE COURT: Please note the appearance of Mr. Fahringer.

MR. FRIEDMAN: If the defendants are finished, I will start cross-examination.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q Sir, what is your occupation?

A At the present time, sir?

Q Yes.

A I am unemployed.

Q And how long have you been unemployed?

MR. LANNA: If your Honor please, I am going to object. As we stated this morning, anything which is outside the scope of the purpose of the hearing -- I think once we get into these other issues we are getting into the very case itself and I --

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THE COURT: I think some question about the background of the man has to do with his general dependability and credibility. I will allow reasonable latitude. There is no jury here and my standards are going to be different in judging credibility.

MR. LANNA: Very well.

Q How long have you been unemployed?

A I would believe since approximately 19- -- the early part of 1970.

Q What was the last job that you held?

A The last job I held was for a construction firm.

Q What was the name of the construction firm?

A Trumid Contracting.

Q Since what part of 1970 were you unemployed?

A To answer that honestly, I would say approximately the beginning of 1970, the early part of 1970.

Q How old are you, sir?

A Approximately forty-two years old.

THE COURT: Approximately?

THE WITNESS: Well, when I say that, forty-two, sir.

THE COURT: I don't want you to stick your neck out too far.

THE WITNESS: I'm sorry, your Honor.

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THE COURT: How old are you, forty-two?

THE WITNESS: Forty-two.

Q Now, sir, you were present in the Bobin Inn Motel on January 26, 1971, is that correct?

A Yes, sir.

Q And the cabin number was 24?

A Yes, sir.

Q How many times prior to that had you been to that cabin, sir?

A Numerous times.

Q Did you rent that cabin?

A No, I didn't.

Q Who rented that cabin?

A From my knowledge, I believe it was rented by a Peter Variano.

Q And how many people lived in that cabin?

THE COURT: If any.

Q (Continuing) If any.

A You mean lived on a daily basis with --

Q Yes.

A No one lived in the cabin.

Q For how long prior to January 26, 1971 had you been visiting that cabin?

A I would say between two and a half to three months.

Q Approximately two and a half to three weeks?

A Two and a half to three months.

Q Three months?

A Yes, sir.

Q And tell me, sir, immediately after you finished testifying this morning, did you walk out into the hall and say, "I ought to get an academy award"?

MR. LANNA: Objection, if your Honor please.

THE COURT: I think that is a pretty good question.

A Immediately after testifying this morning here, I don't recall saying I should get an academy award. I do recall when I walked into the hall that I was talking to, I believe -- I think it was Mr. Lanna I was speaking to, and the only thing I said to him, that, you know, I told the truth to the best of my ability.

Q Did you this morning or this early afternoon, do you recall after finishing up testifying, right?

A Yes.

Q And you recall walking out into the hallway here? Do you recall that?

A Yes, I do.

Q And did you say at any time within twenty minutes of your testifying, "I ought to get an academy award"?

A The only remarks I made when I walked into the hall

was with Mr. Shaw. Mr. Shaw approached me. He --

THE COURT: The answer to the question Mr. Friedman asked you is either yes or no. You either said that or you didn't say that.

THE WITNESS: I can only answer that honestly in one way, sir, if I can just explain.

THE COURT: There is only one way and that is yes or no.

A (Continuing) Mr. Shaw was standing in the hall and in conversation with Mr. Shaw, I said to him -- I said, "You should get an academy award."

Q So your testimony --

MR. LANNA: If your Honor please -- I apologize, Mr. Friedman -- I meant to mention this at the opening of this afternoon's session. It was brought to my attention -- and this reminded me of it -- that the witnesses -- by Mrs. Tytell, who happens to be our witness, that the Government witnesses, especially after Mr. Shaw testified, congregating in the corridor outside the witness room discussing what he had testified about and, of course, I am presuming that the witnesses that were being spoken with were perhaps some the Government may put on later.

I think that is improper and I would ask Mr. Friedman to instruct his witnesses not to discuss their

testimony. Otherwise, there is very little purpose in putting them there.

THE COURT: I would ask that you do that, Mr. Friedman, briefly right now, if you would, and, of course, you are free to cross-examine the witnesses in regard to that.

I think you can go back this way, if this is where they are.

MR. FRIEDMAN: Yes, your Honor.

THE COURT: Do you have any witnesses besides Mrs. Tytell?

MR. FAHRINGER: It just occurred to me I have a lady I was going to call as a witness and I believe she should be excused.

THE COURT: Would you do that?

MR. FAHRINGER: Yes.

THE COURT: Would you escort her to the witness room and instruct Miss Tytell and these ladies that they are not to discuss what either of them will say?

MR. FAHRINGER: I will do that right now.

THE COURT: Mr. Fahringer is going to do the same thing.

MR. BELLANTONI: I have a witness here, also. Mr. Friedman and I are about to enter a stipulation so I will

ask the witness not to leave the court room.

THE COURT: You mean you are going to stipulate what her testimony is going to be?

MR.BELLANTONI: The character of the premises in Yonkers, New York.

THE COURT: Fine, but what has that to do with it?

MR. BELLANTONI: If Mr. Friedman and I do not stipulate on certain details, she will testify as to the character of the house in Yonkers, New York.

THE COURT: Is anybody going to testify on that?

MR. BELLANTONI: No.

MR. FRIEDMAN: The FBI will eventually testify, your Honor, but I have no objection.

THE COURT: All right.

MR. FRIEDMAN: May I continue, then, with the examination, your Honor, or shall I wait until Mr. Fahringer returns?

THE COURT: I think you'd better wait. He will be right back.

All right, Mr. Friedman.

Q Now, sir, to clarify the record and to make it clear, is your answer to the question as to whether you said in the hall, "I ought to get an academy award," your answer is that you didn't say that; is that correct?

A My answer was that I spoke to Mr. Shaw who approached me in the hall, Trooper Shaw, and as I was walking out of this corridor into the hall, I said to Mr. Shaw, "You should get an academy award."

THE COURT: Right. I understand you said that.

Will you answer me directly whether you also said, "I should get an academy award"?

THE WITNESS: Sir, I don't -- the only words, as far as academy award would go, was what I said to Mr. Shaw and I don't recall anything else after that.

THE COURT: All right.

MR. FRIEDMAN: May I just inquire then a little bit further on this?

Q Then your testimony is specifically you didn't say, "I ought to get an academy award," is that correct?

A Myself should get an academy award? I don't recall saying that, Mr. Friedman.

Q You don't recall saying it?

A No.

Q Is it your testimony an hour and a half later you can't recall whether or not you said that?

A The only thing that was mentioned about an academy award was what I said to Mr. Shaw. As far as if I recall saying that I should get an academy award, I have no

reason to say that I should get an academy award and I don't recall saying this, sir.

Q All right. So now, at 2:30 you do not recall whether or not you said, "I should get an academy award," is that correct?

A I don't recall saying it.

MR. WALL: It seems to me this has gone far enough, your Honor. It's almost as laughable as the presentations themselves.

THE COURT: Do you think Marlon Brando should have gotten it?

THE WITNESS: He refused it, your Honor.

Q Now, sir, what were you doing in that Bobin Inn when these people walked in with a search warrant?

A When they walked in? They didn't walk in with a search warrant. They busted in and at the time they busted in they threw us against the back wall of the Bobin Motel.

Q Immediately prior to their breaking into the Bobin Motel room where were you situated, what were they doing?

MR. LANNA: If your Honor please, I object. That deals directly with the case itself, the substantive case, and I see absolutely nothing to do with the suppression hearing.

MR. FRIEDMAN: Your Honor, I would respectfully

respond that we are trying to lay a factual pattern for what was occurring and to determine what the situation was that led up to his requesting a search warrant, what his state of mind was, your Honor, pertaining to it --

THE COURT: I don't know if that is the issue before me on this particular sector of the hearing. I understood the issue on this particular sector of the hearing was whether or not there was sufficient evidence to indicate the warrant was altered.

Am I correct?

MR. LANNA: Yes, sir.

THE COURT: That is the sole issue. I think I will sustain the objection.

MR. FRIEDMAN: Thank you.

THE WITNESS: May I have the question repeated, sir?

THE COURT: You don't need it.

Q When was it that it first came to your mind that that cabin was situated in the northeast corner of the Bobin Inn Motel, the Bobin Inn area?

A When did it come to my mind?

Q Yes.

A As I stated before, when I obtained a copy or a search warrant from Mr. Shaw. I read the search warrant

and the reason why I read the search warrant was because I was looking for my name in the search warrant, and at that point I read a certain clause in the search warrant stating as far as the southeast corner. At this point I directed the search warrant to Mr. Michael Roman, who was known to be more familiar with Rockland County and more familiar with the area. At this point, Mr. Roman said, "No, this is not the southeast corner; it is the northeast corner." And at that point, Mr. Maselli joined in the same conversation.

Q So you remember testifying that when you read it you didn't particularly realize that the cabin was situated in the northeast corner, but you gave it to Mr. Roman to consult with to review it accurately, is that correct?

A Yes, I showed it to Mr. Roman to -- its accuracy as far as the southeast to the northeast.

Q I see.

So you felt he should particularly look it over and determine whether it was accurate as to the northeast or the southeast?

A Correct.

Q And then you testified that Mr. Roman advised you that it was inaccurate, is that correct?

A I believe I believed that after showing it to Mr. Roman, which he was seated to my right and Mr. Maselli

to my left at a table, that Mr. Roman said, "No, this is not the southeast corner, it is the northeast corner," and at that time Mr. Maselli also joined in the same conversation.

Q You mentioned that to any of the officers that were around?

A They heard this. Mr. Shaw was standing directly behind me, I believe, with a Mr. Parkhurst, I believe it was, was standing directly behind us.

Q I see. Mr. Shaw and Mr. Parkhurst were standing directly beside you?

A No, behind me.

Q Did you notice whether Mr. Parkhurst overheard what you were saying?

MR. LANNA: Objection, if your Honor please, to the form. I think he is asking something which this witness simply couldn't answer.

THE COURT: I think he is asking something the witness could answer, because the witness said he already said Mr. Shaw and Mr. Parkhurst heard it, so Mr. Friedman is trying to find out how they heard it.

A We were talking -- we were not whispering. We were talking in general conversation, like I am talking to you, maybe not as loud, and it is inconceivable for me

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to believe they didn't overhear this.

THE COURT: You assume they did overhear you, but neither one told you?

THE WITNESS: No. they didn't tell us, sir, but I assume they did.

Q When you got before Judge Flynn later that evening --

A Much later in the morning; it wasn't in the evening, it was in the morning.

Q In the morning. -- did you mention that it was inaccurate, the search warrant?

A No, I didn't mention that to Judge Flynn.

Q You didn't in any way mention that it was inaccurate?

A No, I didn't.

Q When you talked to Mr. -- you testified you did speak to Mr. McKenna, is that correct?

A I spoke to Mr. McKenna in the Stony Point police barracks located in Stony Point.

Q When did Mr. McKenna come in?

A Mr. McKenna -- we were situated in a room -- Mr. Roman, Maselli, myself, my brother and Mr. Hanlan. At that time we were drinking coffee. I directed my first move to Mr. Shaw. He told me I would have to speak to the state.

Q By your "first move," you mean you said what to

Mr. Shaw?

A Well, I told Mr. Shaw that I wanted a copy of the warrant, that he promised me a copy when I got back to the barracks.

Q Yes.

A At that time he told me I would have to get it from Westchester County because this was a Westchester County arrest. And at that point, Mr. Vagaro, who was the District Attorney of Westchester County, and Mr. William McKenna -- I believe his first name was William -- McKenna walked in the corridor.

Q They walked where?

A They walked in a corridor, past the room we were in. At this point, here we were, not handcuffed, we were walking around the room drinking coffee. I don't know whether it was three or four minutes after he came in, he started to question me, Mr. McKenna.

Q Mr. McKenna started to question you?

A Yes, he started to talk to me about where I lived and he mentioned the fact to me about the moving the location from Westchester to Rockland County. At this point, I said, "I was told to see one of the officials from Westchester County to obtain a search warrant," and at this point he told me what I could go and do.

Q He didn't give you the search warrant?

A Never gave me the search warrant.

Q Now, tell me --

THE COURT: Did anyone get a search warrant?

THE WITNESS: No, no one. I never received one personally.

MR. FRIEDMAN: Off the record, your Honor --

THE COURT: You know counsel received it sooner or later.

Q Now, sir, with respect to -- when you were seated at that table in the Bobin Inn, did you make any remark to any of the investigators to the effect that you were upset that it was a Westchester County search warrant because they knew how to draft search warrants?

A When I was sitting at the table reading the search warrant, is that what you mean, Mr. Friedman?

Q No. At any time while you were sitting at the table in the Bobbin Inn.

A The only thing -- the only officer, let me put it that way, that I spoke to in the Bobin Inn was a Mr. Shaw and I believe Mr. Parkhurst, and I believe a Mr. -- you mentioned his name before, a Garret or Garrity, something like that.

THE COURT: The question is, whoever you talked

to --

THE WITNESS: I didn't really understand that question, sir.

THE COURT: He asked you whether you told any person that you did talk to that you were upset because of the Westchester County warrant because the Westchester County people really knew how to draft a good warrant.

THE WITNESS: No, I didn't say that to any of the arresting officers pertaining to the search warrant.

Q Did you say that to anyone?

A Not that I recall, not in that way of talking, that terminology. I didn't say that to anyone.

Q Well, maybe not in that terminology, but will you tell me whether you used any other terminology which is similar and the words were of the same import?

A In regard to the warrant, after speaking to Mr. Roman and Mr. Maselli, when we realized it was the description, instead of southeast was the northeast, we realized that it was a bad description of the cabin.

Q Sir, I ask that you respond to my question. The question is: At any time while you were seated at the Bobin Inn, when you spoke to anyone and said to them, or conveyed to them , words to the effect that you were upset because this was a Westchester County search warrant and

they really knew how to draft them, and additionally that you moved out of the Westchester area to Rockland County to get away from their search warrants?

A I never said that to anyone in that Bobin Inn that I moved out of the Westchester County to go into Rockland County.

Q All right. I will ask you --

A I am answering that part of the question for you.

Q Yes. I will just ask you: Did you ever tell anyone while you were seated, or while you were present at the Bobin Inn Motel anything to the effect that you were upset that it was a Westchester County search warrant because Westchester County really knew how to draft search warrants?

A I really do not recall saying that, Mr. Friedman.

Q Okay. Do you recall saying anything to that effect?

A In reference to what you just said? No, I don't recall saying anything to that effect.

Q After asking Mr. McKenna for a copy of the search warrant, who else did you ask for a copy of the search warrant?

A I just spoke to Mr. Shaw and Mr. McKenna that I recall speaking to at the barracks in reference to a copy of the search warrant.

Q Did you see Mr. Roman ask anyone for a copy of the search warrant?

A No, I don't recall seeing Mr. Roman ask anyone for a copy of the search warrant.

Q Have you seen search warrants before?

A Yes, I have.

Q Have you been the subject of searches before?

A Yes, I have.

Q On how many other occasions?

A Approximately, I would say three or four. I wouldn't swear to it right now, but more than two.

Q Have other people been present with you when you were the subject of a search?

A Would you repeat that question, Mr. Friedman?

Q Well, when you were the subject of a search, were other people who were also the subject of a search present with you at the same time?

A Yes, sir.

Q And did you show those other people copies of the search warrants on each other instance when you were searched?

MR. LANNA: Objection, if your Honor please. I think that is irrelevant and immaterial.

THE COURT: May I have the last question, please?

(Record read.)

THE COURT: Overruled.

THE WITNESS: Do I have to answer?

THE COURT: Yes, please.

A Did I show anyone a copy of the search warrant with other people involved in an arrest with me? Is that what you are telling me?

Q I am talking about now, say, there were two people present and arrested with you, right?

A Yes.

Q And there was a search warrant.

A Yes.

Q Now, these other people who were arrested with you and searched along with you, did you show them a copy of the search warrant, consult with them on each other instance when you have been searched?

A Well, on two occasions --

MR. LANNA: Your Honor, we are assumign a state of facts not in evidence on these prior occasions.

THE COURT: You mean if there was an arrest involved? He has said that he had been searched before, the subject of a search warrant.

MR. LANNA: He also has to have been given the search warrant or had it in his presence.

THE COURT: Let's to through it without taking all this time. On this prior occasion were you ever given a copy or requested a copy of the search warrant?

THE WITNESS: I requested a search warrant when I was arrested. On two occasions, your Honor, when I was arrested, this was -- in other words, I asked the arresting officers for search warrants and I never obtained it.

THE COURT: Did you ever, in the course of any of these experiences with search warrants before January 26, 1971, actually receive a copy of the search warrant?

THE WITNESS: Yes, I did, your Honor.

THE COURT: At least once before?

THE WITNESS: Yes, I did.

THE COURT: On that occasion, when you received it, did you show it to any other person who was in your company?

THE WITNESS: Yes, I did, your Honor.

Q Who was that other person?

A Angelo Politi, my brother.

Q Did you talk with him as to whether he felt it was a proper search warrant?

A No, I didn't.

Q On this occasion, you consulted with Mr. Michael Roman as to whether or not he felt it was a proper search

warrant, is that correct?

A Yes, I did.

Q Now, sir, were you in an agitated state when the officers came through the door?

A Can you just clarify what you mean by "an agitated state," please?

Q Were you upset?

A Yes, I was slightly upset.

Q Did you observe Mr. Roman's demeanor?

A I didn't observe Mr. Roman's demeanor at all.

Q Well, did you observe whether he was upset or not?

A No, I didn't.

Q Isn't it a fact that when the officers came through the door that your brother, Philip Politi, threw a garbage can at one of them?

MR. WALL: Excuse me --

MR. LANNA: Objection.

MR. WALL: That has no bearing.

THE COURT: What bearing has it?

MR. FRIEDMAN: Just the conditions that were occurring at the time of the events.

THE COURT: On the question of whether this thing was altered or not, what it gets down to is which one of these people, Mr. Politi here on the stand or Mr. Parkhurst.

I find very little probative value in it.

MR. FRIEDMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LANNA: No questions.

THE COURT: Thank you. You are excused.

(Witness excused.)

MR. LANNA: Your Honor, my last witness is going to be Mrs. Tytell. If I may, for the purpose of Mr. Friedman, may the record reflect -- and as an officer of the court I make such application -- that despite my requests on February 2nd of 1971 at the preliminary hearing -- and I might state I have already introduced that transcript into evidence -- I made three separate requests for that warrant to be exhibited to me; once at the beginning, once during the course of the hearing, and at the conclusion of the hearing. On each of those occasions it was denied over the objection of the prosecutor. And following that, I wrote and asked for a copy of that warrant from the Rockland County District Attorney's office and I received a copy over their letter dated March 22nd, I believe, of 1971. But I only received a copy of the warrant at that time.

Then, around the last few days of June of 1971, after I had written the district attorney's office once again in Rockland County, I finally received the affidavit.

That was either the very end of -- in fact, I received that July 2nd.

THE COURT: Also a copy?

MR. LANNA: Yes, sir. Motions were instituted by myself in behalf of a defendant in the Rockland County Court to suppress, immediately after I received all of this documentation. I think the record should reflect on February 1, 1972 we commenced a suppression hearing relative to our allegations that this document was altered and it was suspended at that time because we required an expert analysis of the original of these documents, after which Mrs. Tytell, who was employed by my office because I finally had an agreement through the Court and the prosecutor on that February 2nd date of 1972, they would arrange to get the originals down to the expert for the purpose of examination.

I just feel this sequence should be contained within our record here.

Excuse me for a moment.

I just want to clarify on the record -- I think your Honor must have gotten the gist of it, but they feel I should make it very clear -- that on the February application before Judge Flynn -- February 2nd of 1971, when I made the three separate requests, this was before the same Judge

Flynn that had originally arraigned these people.

THE COURT: We understand that.

MR. LANNA: I thought your Honor did.

Mrs. Tytell.

THE COURT: I take it the papers were not even made an exhibit, sealed or otherwise, is that right?

MR. LANNA: No. In fact, if I may -- it is in evidence and I think perhaps the record should reflect exactly what my initial request was.

At Page 22 of defendant Anthony Politi's Exhibit A, question by myself, "Your Honor, I wouldn't even propose to suggest it, but I think certainly that a copy of that warrant should be produced and at least be marked for identification."

THE COURT: Was there any response?

MR. LANNA: Well, the district attorney objected to it and several pages thereafter, Judge Flynn denied my request.

THE COURT: All right. Thank you.

Call the witness.

MR. ANOLIK: Your Honor, I am sure the record reflects we all join in this application, even though it is an Anthony Politi exhibit, we all adopt the exhibit for our clients.

THE COURT: I assume so.

Mr. Friedman?

MR. FRIEDMAN: Your Honor, with respect to the testimony of the experts, I would request the leave of the Court to have my expert present and sit here.

THE COURT: You may.